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THOMSON'S
DICTIONARY OF BANKING

A CONCISE ENCYCLOPAEDIA OF BANKING LAW AND PRACTICE

TENTH EDITION

BY

R. W. JONES

FELLOW OF THE INSTITUTE OF BANKERS
GILBART LECTURER

WITH APPENDIXES ON

SCOTTISH BANKING

By C. J. SHIMMINS
A.C.I.S., CERT. A.I.B.
Examiner in "Practical Banking" to the Institute of Bankers in Scotland

IRISH LAND LAWS

IN THEIR RELATION TO BANKING
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PREFACE TO TENTH EDITION

In preparing a new edition of this Dictionary, the editor has not attempted to alter the form in which it was originally compiled, but has removed items which have become redundant by lapse of time or alteration of law, and inserted new matter which properly should find a place in a work of this description. There has been no attempt to write treatises on such topics, but to frame them in a concise manner compatible with the idea of a work of ready reference.

The editor acknowledges his indebtedness and gratitude to his many banking friends and colleagues who have placed their knowledge and experience so readily at his disposal and by careful reading and checking have endeavoured to make the new edition free of errors.

R. W. JONES

PREFACE TO FIRST EDITION

THE Dictionary of Banking has been compiled in order to provide, in one volume, the means of obtaining information, with the minimum of trouble, upon any subject connected with the business of banking.

Hitherto it has been a matter of continual difficulty with many bank officials to know exactly where to turn for information upon certain subjects; but it is hoped and believed that the present volume will meet this difficulty, and that it will enable anyone to find in its pages a ready and reliable reference whenever the occasion arises.

The following pages include, as far as possible, a reference to all the various terms and matters which come within the scope of a banker's ordinary duties, as well as to other matters which arise out of, or are associated with, the business of banking, such as bankruptcy, company regulations, partnerships, stamp duties, stock exchange, winding up, law of property, etc.

The book is furnished with many cross-references, and at the end of each leading subject, e.g. ACCOUNTS, BANKRUPTCY, BILL OF EXCHANGE, CHEQUE, COMPANIES, INSURANCE, MORTGAGE, STAMP DUTIES, STOCK EXCHANGE, TITLE DEEDS, will be found a list of the principal articles connected with that subject, which should facilitate the discovery of any particular point.

The whole of the Bills of Exchange Act, 1882, is given, the sections being distributed under the appropriate headings. Under the title BILLS OF EXCHANGE ACT, 1882, references are supplied to the various articles in which the different sections have been placed.

Many sections from other Acts, which are useful and interesting to bankers, are also given under the proper headings, and include the Currency and Bank Notes Act, 1928, and the Companies Act, 1929. For example, if information is required respecting the registration of a charge given by a company, the actual words of the Companies Act, 1929, on that subject are quoted under REGISTRATION OF CHARGES; and respecting the registration of a mortgage of a ship, the provisions of the Merchant Shipping Act, 1894, are set forth under SHIP, and so in many other cases, an endeavour having been made, wherever practicable and necessary, to quote the sections of the Acts relating to matters of importance.

PREFACE

There is probably no subject of greater interest to branch managers and senior clerks than that of securities for advances, and consequently all matters connected with the examination of title deeds and the investigation of titles have been treated in the Dictionary in accordance with their importance.

In addition to the article on TITLE DEEDS, dealing with the matter in a general way, there is an article on TITLE DEEDS—NOTES RE TITLE, wherein is set out a number of the principal points which it is thought will prove useful in indicating what a banker should attend to when examining a parcel of deeds of freehold or leasehold property. If further information should be required on any of the points raised, the subject can be referred to in its alphabetical order in the book. A few questions relating to the value of a property which is offered as security are added to that article, and additional hints as to valuations, particularly for the benefit of younger managers, may be found under ADVANCES, FARM STOCK, LICENSED PROPERTY, SHIP—VALUATION OF, VALUATION.

With regard to securities other than title deeds, articles such as the following may be referred to:—AMERICAN SHARE CERTIFICATES, BEARER BONDS, BILL OF LADING, BILL OF SALE, BOND OF CREDIT, CERTIFICATE, DEBENTURE, DEBTS—ASSIGNMENT OF, DOCK WARRANT, GUARANTEE, INSCRIBED STOCK, LIFE POLICY, NEGOTIABLE INSTRUMENTS, SHARES, etc.

A list of many of the abbreviations which are used in bank offices is supplied under ABBREVIATIONS. The article BANKRUPT PERSON contains separate headings relating to a bankrupt drawer, partner, payee, surety, etc., and under STATUTE OF LIMITATIONS the various sub-headings show how the statute affects the different matters with which a banker is concerned, such as a bank note, a bill of exchange, the drawer of a cheque, a guarantee, memorandum of deposit, promissory note, etc. A series of articles is supplied dealing with the position upon a death, e.g. DEATH OF ACCEPTOR, ADMINISTRATOR, DRAWER, GUARANTOR, JOINT CUSTOMER, PARTNER, SHAREHOLDER, TRUSTEE, etc.

Specimens of indorsements which are usually accepted, as well as examples of those which are not, as a rule, passed by a banker, are given in tabular form under INDORSEMENT.

The results of law cases have been given, wherever necessary, and in many instances the words of the judges are quoted. References are added to the various cases, and the abbreviations in the quotation of reports are explained on page x.

To facilitate reference being made to law reports other than those that are quoted in the text, the date of the decision has been given in every instance.

PREFACE

The following books amongst others have been consulted in the preparation of the present volume—

Grant's Law of Banking	
Chalmers' Bills of Exchange Act, 1882	
The Law of Banking	Heber Hart, LL.D. (Lond.)
The Law of Banking	Sir John R. Paget, Bart., K.C.
The Practice of Banking (4 Vols.)	John Hutchison
Banking and Negotiable Instruments	Frank Tillyard, M.A.
Bills, Cheques, and Notes	J. A. Slater, B.A., LL.B. (Lond.)
English Practical Banking	T. B. Moxon
The Country Banker	George Rae
Lombard Street	Walter Bagehot
Business Man's Guide	Sir Isaac Pitman & Sons, Ltd.
Present-Day Banking	F. E. Steele
Banking and Currency	Ernest Sykes, B.A.
The Practice and Law of Banking	H. P. Sheldon
Banker's Advances	Francis R. Stead
Bankers' Securities Against Advances	Lawrence A. Fogg
Bankers' Advances Against Produce	Alfred Williams
Foreign Exchange and Foreign Bills	W. F. Spalding
My Banker and I	J. G. Kiddy
The Country Banker's Handbook	J. G. Kiddy
History, Principles, and Practice of Banking	J. W. Gilbart
Money Market Primer	George Clare
The Elements of Banking	H. D. Macleod, M.A.
Handbook on Joint Stock Companies	F. Gore-Browne, M.A., K.C., and W. Jordan
Banking Law	W. Wallace, M.A., and A. McNeil
Law of Stamp Duties	E. N. Alpe
Questions on Banking Practice	
Journal of the Institute of Bankers	
Bankers' Magazine	
Bankers' Almanac and Year Book	
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I have to express my deep indebtedness to the many friends who have been kind enough to supply most useful information and to read and correct the sheets as they have passed through the press.

W. THOMSON

Newcastle-on-Tyne

ABBREVIATIONS USED IN THIS BOOK WHEN REFERRING TO LAW CASES

A.C. or App. Cas. } Appeal Cases, Law Reports.
A. & E., Adolphus & Ellis.
All E.R., All England Reports.
B. & Ad., Barnewall & Adolphus.
B. & C., Barnewall & Cresswell.
Be., Beavan.
Bing., Bingham.
Burr., Burrows.
C.B., Common Bench.
C.B.N.S., Common Bench New Series.
C.P.D., Common Pleas Division, Law Reports.
Ch., Chancery, Law Reports.
Ch. App., Chancery Appeals, Law Reports.
Ch.D., Chancery Division, Law Reports.
Cl. & Fin., Clark & Finelly.
Com. Cas., Commercial Cases.
Cox C.C., Cox's Criminal Cases.
Dunl., Dunlop, Court of Sessions Cases, Scotland.
E. & B., Ellis & Blackburne.
E. & I. A., English and Irish Appeals, Law Reports.
Exch., Exchequer Reports.
F., Fraser, Court of Sessions Cases, Scotland.
H.L.C., Clark's House of Lords' Reports.
I.C.L.R. Ir.R.C.L. } Irish Common Law Reports.
I.L.T., Irish Law Times.
I.R., Irish Reports.
J. & H., Johnson & Hemming.
K.B., King's Bench, Law Reports.
L.J., C.P., Law Journal, Common Pleas.
L.J., Ch., Law Journal, Chancery.
L.J., Q.B., Law Journal, Queen's Bench.
L.J.R. from [1947]–[1949].
L.R.C.P., Law Reports, Common Pleas.
L.R., Eq., Law Reports, Equity.
L.R., Ex., Law Reports, Exchequer.
L.R., Ch., Law Reports, Chancery.
L.R.H.L., Law Reports, House of Lords.
L.R.Ir., Law Reports, Ireland, Chancery and Common Law.
L.R.P.C., Law Reports, Privy Council.
L.R., Q.B., Law Reports, Queen's Bench.
L.T., Law Times Reports.
Ll.L.R., Lloyd's List Law Reports.
M. & S., Maule & Selwyn.
M. & W., Meeson & Welsby.
Macq. H.L.R., Macqueen's Appeal Cases (Scotch).
Mer., Merivale.
Q.B., Queen's Bench Cases.
Q.B.D., Queen's Bench Division.
R., Rennie, Court of Session Cases, Scotland.
S.C., Sessions Cases, Scotland.
Sc.R., Scottish Law Reporter.
S.L.T., Scots Law Times.
Sol.J., Solicitors' Journal.
T.C., Tax Cases.
T.L.R., Times Law Reports.
T.R., Term Reports.
W.N., Weekly Notes.
W.R., Weekly Reporter.

DICTIONARY OF BANKING

ABBREVIATIONS. The following is a list of the chief abbreviations met with in banking—

A/c., Account.
A/C., Account Current.
A/D., After Date.
A/o., Account of.
A/S., After Sight.
Ad. Val., *Ad valorem.*
Agt., Agreement. Agent.
Assigt., Assignment.

B.B., Branch Bill.
B/C., Bills for Collection.
B.D., Bill Discounted.
B/E., Bill of Exchange.
B/L., Bill of Lading.
B.N., Bank Note.
B.O., Branch Office.
B/P., Bills Payable.
B/R., Bills Receivable.
B/S., Balance Sheet. Bill of Sale.

C., Copper. Country.
C/–, Coupon.
C.A., Chartered Accountant. Credit Account.
C *a/c*, C/A., Current Account.
C.B., Country Bill.
C/B., Cash Book.
C.C., Cash Credit.
C.C., Country Cheque. Country Clearing.
C.C.O., Country Clearing Office.
C.D., Cum Dividend.
C.H., Clearing House.
C.I.F., Cost, Insurance, Freight.
C.I.F. and C., Cost, Insurance, Freight and Commission.
C.I.F. and E., Cost, Insurance, Freight and Exchange.
C/N., Contract Note.
C.O., Cash Order.
C.O.D., Cash on Delivery.
C.P., Charter Party.
Chq., Cheque.
Com., Commission.
Contra, Against.
Cr., Creditor, Credit.
Cum D., With Dividend.

D., a penny. D is the first letter in *Denarius* (Latin).
D.A., Deposit Account.
D/A., Days after Acceptance.
D/A., Documents on Acceptance.
D/B., Day Book.
D/D., Days after Date. Demand Draft.
D/O., Delivery Order.
D/P., Documents on Payment.
D.P.B., Deposit Pass Book.
D/R., Deposit Receipt.
Deb., Debenture.
Dft., Draft.
Dis., Disct., Discount.
Div., Dividend.
Dols., Dollars.
Dr., Debtor.
D/S., Days after Sight.

E.E., Errors Excepted.
E. & O.E., Errors and Omissions Excepted.
Ex., Excluding.
Ex Cp. or x/cp., Ex Coupon.
Ex D. or x/d., Ex Dividend.
Ex Int., Ex Interest.
Exch., Exchange.
Execx., Executrix.
Exor., Executor.

F., Franc.
F.A.S., Free Alongside Ship.
F.O.B., Free on Board.
F.O.R., Free on Rail.
F/P., Fire Policy.
F.P.A., Free from Particular Average.
F.p., Fully Paid.
Fi. Fa., *fieri facias* (*q.v.*).
Fo., Fol., Folio.

G., Gold.
Gtee., Guarantee.
G/A., General Average.

H.M.C., His Majesty's Customs.
H.M.S., His Majesty's Service.
H.O., Head Office.

I/I., Indorsement Irregular.
Ins., Insurance.

Int., Interest.
Inv., Invoice.
I O U, I Owe You.
Irr., Irredeemable.

J/A., Joint Account.
Jour., Journal.
Jr., Junr., Junior.

L/A., Letter of Authority.
L/C., Letter of Credit.
L/D., Letter of Deposit.
£A., Pounds Australian.
£E., Pounds Egyptian.
£N.Z., Pounds New Zealand.
£P., Pounds Palestine.
£T., Pounds Turkish.
Lit., Lire Italian.
L.O., London Office.
L/P., Life Policy.
L.S. (Lat., *Locus sigilli*), Place of the Seal.
L.s.d. (Lat., *Librae, solidi, denarii*), Pounds, Shillings, Pence.
Led., Ledger.
Ltd., Limited.

M. (Lat., *Mille*), Thousand.
M., Metropolitan.
M/C., Marginal Credit.
M/D., Months after Date.
M/D., Memorandum of Deposit.
M.O., Money Order.
MS., Manuscript.
M/S., Months after Sight.
M/T., Mail Transfer.

N.A., New Account.
N/A., Non-acceptance.
N/N., Not to be Noted.
No., Number.
N.P., Notary Public.

O.A., Old Account.
O/A., On Account
O/D., On Demand.
O/D., Overdraft.
% (Lat., *Per centum*), By the Hundred.
O.O., Own Occupation.
o/oo (Lat., *Per mille*), By the Thousand.
O.R., Official Receiver.
O.R., Owner's Risk.
O.S., Old Style.
O/s, o/sg., Outstanding.

P/A., P/Av., Particular Average.
P/A., Power of Attorney.
P.A. (Lat., *Per annum*), Yearly.
P.B., Pass Book.
P/C., Price Current.
P.C. (Lat., *Per centum*), By the Hundred.
Pd., Paid.
P. & L., Profit and Loss.
P/N., Pro. Note, Promissory Note.
P.O., Postal Order.
P.P., Per Procurationem.
P.S. (Lat., *Post scriptum*), Postscript.
Payt., Payment.
Per an. (Lat., *Per annum*), Yearly.
Per con. (Lat., *Per contra*), On the other side.
Per cent. (Lat., *Per centum*), By the Hundred.
Per pro. (Lat., *Per procurationem*), By procuration.
Pm., Premium.
Pro., For.
Pro tem. (Lat., *Pro tempore*), For the time being.

Qr., Quarter.
Qy., Query.

R., Rupee.
R.A.P., Rupees, Annas, Pies.
R/C., Re-credited.
Recpt., Receipt.
Reg., Regd., Registered.
Rev. a/c., Revenue Account.
Rs., Rupees.

S., Silver, Shilling (Lat., *Solidus*).
$, Dollars.
S.B., Sub Branch.
S.B., Short Bill.
S.C., Safe Custody.
S.O., Sub Office.
S.P.A., Sundry Persons' Account.
S.P., Suprà Protest.
S.S., Special Settlement.
S.S., Steamship.
S/V., Surrender Value.
St., Stet (Lat., *Stet*), Let it stand.
Ster., Stg., Sterling.
Sy. Crs., Sundry Creditors.
Sy. Drs., Sundry Debtors.

T., Town.
T/o., Turnover.
T.T., Telegraphic Transfer.
Tfr., Transfer.

V/A., Voucher Attached.

W.W., Warehouse Warrant.
Wt., Warrant.

X.C., Ex Coupon.
X.D., Ex Dividend.
X.In., Ex Interest.

ABRASION OF COINS The loss of weight through their constant use which occurs in coins which are in circulation After a certain time many coins become so much worn as to be below the minimum weight allowed by law but so long as the impressions are discernible upon coins the general public do not concern themselves very much with their weight Anyone who has a gold coin tendered which is below the least current weight may by law cut or deface it (See COINAGE LIGHT GOLD)

ABSCONDING DEBTOR (See ACT OF BANKRUPTCY)

ABSOLUTE TITLE Land may be registered under the Land Registration Act 1925 with an Absolute Title A grant of an Absolute Title gives the proprietor a state guaranteed title against all the world The Land Certificate thereafter is the sole document of title and the previous title deeds are obsolete Absolute Title is granted for the most part in respect of freehold land but in certain circumstances may be granted in respect of a leasehold estate A good leasehold title may be converted into an absolute title after ten years A possessory title may be converted into an absolute title after fifteen years if freehold and after ten years if leasehold (See LAND REGISTRATION)

ABSTRACT An abridgment or epitome of a book or document

ABSTRACT OF TITLE A document prepared by the vendor's solicitor and delivered to the purchaser's solicitor It is an epitome of the vendor's deeds and subsidiary documents but is not part of the title The abstract should commence with the deed—the root of title—stipulated in the contract of sale for commencement of title If there is no such stipulation the abstract should ordinarily cover a minimum period of thirty years (Law of Property Act 1925 Section 44 (1)) Previously the period was forty years An abstract of title will disclose in addition to the deeds in the vendor's possession documents not usually handed over to a purchaser but necessary to show an unbroken chain of title such as probates marriage and death certificates settlements etc An acknowledgment of the right to production of any missing deeds or documents mentioned in the abstract of title should be obtained (See OPEN CONTRACT TITLE DEEDS)

ACCEPTANCE This word is commonly used as meaning a bill of exchange that is the actual bill itself but an acceptance is really the writing across the face of a bill by which the drawee agrees to the order of the drawer The drawee is the person to whom a bill is addressed by the drawer and who is required to pay on demand or at a fixed or determinable future time a sum certain in money to or to the order of a specified person or to bearer If the drawee agrees to the drawer's order he signifies his assent by accepting the bill When the drawer has accepted a bill he is called the acceptor

An acceptance is defined by Section 17 of the Bills of Exchange Act 1882 as follows—

(1) The acceptance of a bill is the signification by the drawee of his assent to the order of the drawer

(2) An acceptance is invalid unless it complies with the following conditions namely

(*a*) It must be written on the bill and be signed by the drawee The mere signature of the drawee without additional words is sufficient

(*b*) It must not express that the drawee will perform his promise by any other means than the payment of money

As a rule a drawee accepts a bill after it has been fully completed and signed by the drawer but by Section 18 A bill may be accepted—

(1) Before it has been signed by the drawer or while otherwise incomplete

(2) When it is overdue or after it has been dishonoured by a previous refusal to accept or by non payment

(3) When a bill payable after sight is dishonoured by non acceptance and the drawee subsequently accepts it the holder in the absence of any different agreement is entitled to have the bill accepted as of the date of first presentment to the drawee for acceptance

There are two kinds of acceptances—

(1) General acceptance (See ACCEPTANCE GENERAL)

(2) Qualified acceptance (See ACCEPTANCE QUALIFIED)

A general acceptance assents without qualification to the order of the drawer A qualified acceptance in express terms varies the effect of the bill as drawn (Section 19 s s 2)

An acceptance is usually upon the face of the bill but the drawee's signature placed upon the back of it is regarded as sufficient

In such a case it is usual to make a reference on the front of the bill to the fact that the acceptance is on the back. A drawee may accept a bill by merely writing his name across it, without any further words, but it is customary for the word "accepted" to be used. When the bill is domiciled, the name of the bank where it is payable follows the word "accepted," and then the acceptor signs his name. The commonest form of acceptance (a general acceptance) is—

"Accepted, payable at the X & Y Banking Coy., Ltd., London, John Brown."

If the bill is payable at so many days after sight, the drawee must add the date of sighting to his acceptance. (See SIGHTING A BILL.)

If there are several drawees named on a bill, each one of them must sign the acceptance; but an order addressed to two drawees in the alternative, or to two or more drawees in succession, is not a bill of exchange. (See DRAWEE.)

Section 17 states that the acceptance must be signed by the drawee, but anyone who holds a proper authority from the drawee to accept bills may accept on his behalf. A bill cannot be drawn on one person and accepted by another.

Where the drawee is a firm, the partner who accepts must do so in the name of the firm. Where the drawee is a limited company, the acceptance should contain the name of the company as well as the signatures of the authorised officials. If officials in signing do not show that they sign for and on behalf of the company they may render themselves personally liable. (See AGENT, "PER PRO.")

With regard to the rules as to presentment of a bill for acceptance, see PRESENTMENT FOR ACCEPTANCE.

When a bill is duly presented for acceptance and is not accepted within the customary time (that is by the close of business on the day following presentation for acceptance), the person presenting it must treat it as dishonoured by non-acceptance. (See DISHONOUR OF BILL OF EXCHANGE.)

Until a drawee has accepted the bill he is not liable thereon; but in Scotland where the drawee has funds available for its payment, the bill operates as an assignment of the amount of the bill in favour of the holder from the time when the bill is presented to the drawee. (Section 53.)

An acceptor is at liberty to cancel his acceptance provided that the bill is still in his own hands, and that he has not led any one to believe that he would accept it.

In the Bombay High Court (*The Times*, 29th Nov., 1924), a decision was given with regard to certain bills which had been re-accepted, at or before maturity, an extension of the due date having been agreed upon with the consent of the drawers. It was held that the original bills had been extinguished, and that the bills became new instruments which could not be received in evidence for want of the proper stamp duty.

The liability of an acceptor is defined by Section 54—

"The acceptor of a bill, by accepting it—

"(1) Engages that he will pay it according to the tenor of his acceptance:

"(2) Is precluded from denying to a holder in due course:

"(*a*) The existence of the drawer, the genuineness of his signature and his capacity and authority to draw the bill;

"(*b*) In the case of a bill payable to drawer's order, the then capacity of the drawer to indorse, but not the genuineness or validity of his indorsement;

"(*c*) In the case of a bill payable to the order of a third person, the existence of the payee and his then capacity to indorse, but not the genuineness or validity of his indorsement."

As an acceptor is responsible for the genuineness of the drawer's signature, a drawee consequently incurs an unnecessary liability if he accepts a bill before it has been signed by the drawer. If the bill is drawn "per pro" or on behalf of the drawer, the drawee ought to satisfy himself, before accepting the bill, that the drawer has authorised the bill to be drawn in that way. He is not liable for signatures, such as the payee's or an indorser's, which do not, in the ordinary course of things, appear upon a bill until after it has been accepted.

No person is liable as acceptor of a bill who has not signed it as such: Provided that (1) where a person signs a bill in a trade or assumed name, he is liable thereon as if he had signed it in his own name; (2) the signature of the name of a firm is equivalent to the signature by the person so signing of the names of all persons liable as partners in that firm (Section 23). In the case of a non-trading partnership, an acceptance by a partner binds himself alone and not the firm.

If there are several acceptors on a bill they are jointly liable, not jointly and severally.

Where a bill is accepted payable at the acceptor's bankers, that is a sufficient authority for the banker to debit it to his customer's account; but, in practice, country bankers often require particulars of acceptances falling due to be given, and a written order from the customer to pay them. Such an order does not require to be stamped. London bankers pay inland bills without advice, but foreign bills domiciled in London require advice.

The death or bankruptcy of an acceptor revokes a banker's authority to pay an acceptance.

If the banker is a holder for value, he may debit an acceptance to the acceptor's account, even if the acceptor has sent instructions not to pay the bill.

Where a bill is accepted, say, by John Brown payable at the British Bank, Leeds, although no drawee's name is mentioned in the bill, it may be debited to his account. A bill may also be charged to the acceptor's account which is accepted simply "John Brown," if there is an indication elsewhere on the bill that it is payable at the British Bank, Leeds.

A banker is not obliged to pay a bill accepted payable with him or to retire an acceptance payable in London, except by instructions or by custom. In *Bank of England* v. *Vagliano Brothers*, [1891] A.C. 107, it was held that "if a banker undertakes the duty of paying his customer's acceptances, the arrangement is the result of some special agreement, expressed or implied."

An order signed by a customer to retire an acceptance (whether his own or another person's) does not require a stamp to be affixed.

A drawer often indicates in the body of the bill, or below the drawee's name, where it shall be payable, e.g. "payable in London," but if there is no such indication, the drawee accepts it payable in the place where he lives, unless he follows the recognised custom and makes it payable in London.

If a bill is accepted payable at, say, the British Bank, Ltd., and no town is mentioned, it should be presented at the British Bank in the town where the drawee is described as living.

As to the practice of banks accepting bills on behalf of customers see CONFIRMED CREDIT, DOCUMENTARY BILL.

In Scotland, acceptors usually sign their names under the drawer's signature, but when they accept the bill payable at their bankers, the acceptance is generally across the bill. (See BILL OF EXCHANGE.)

ACCEPTANCE CREDIT. A credit whose terms involve the drawing of time bills needing acceptance either by the bank issuing the credit or by the customer. (See DOCUMENTARY CREDIT.)

ACCEPTANCE FOR HONOUR. The drawer of a bill and any indorser may insert in the bill the name of a person to whom a holder may resort in case of need, that is in case the bill is dishonoured by non-acceptance or non-payment. Such a person is called the referee in case of need. (See Bills of Exchange Act, 1882, Section 15.) If the bill is not accepted by the drawee the holder may, after the bill is protested for non-acceptance, present it to the referee in case of need. When the referee accepts it, he becomes an acceptor for honour.

After protest for non-acceptance, any person may, with the consent of the holder, accept a bill suprà protest for the honour of any party thereon. Section 65 of the Bills of Exchange Act, 1882, provides as follows—

"(1) Where a bill of exchange has been protested for dishonour by non-acceptance, or protested for better security, and is not overdue, any person, not being a party already liable thereon, may, with the consent of the holder, intervene and accept the bill suprà protest, for the honour of any party liable thereon, or for the honour of the person for whose account the bill is drawn.

"(2) A bill may be accepted for honour for part only of the sum for which it is drawn.

"(3) An acceptance for honour suprà protest in order to be valid must—

"(*a*) be written on the bill, and indicate that it is an acceptance for honour:

"(*b*) be signed by the acceptor for honour.

"(4) Where an acceptance for honour does not expressly state for whose honour it is made, it is deemed to be an acceptance for the honour of the drawer.

"(5) Where a bill payable after sight is accepted for honour, its maturity is calculated from the date of the noting for non-acceptance, and not from the date of the acceptance for honour."

An acceptance for honour is written across the bill as, "Accepted for the honour of John Brown, Thomas Jones," or "Accepted suprà protest, Thomas Jones," or "Accepted for the honour of John Brown with £ for notarial charges, Thomas Jones," or, "Accepted S.P. (i.e. suprà protest), Thomas Jones."

The liability of an acceptor for honour is dealt with in Section 66 as follows—

"(1) The acceptor for honour of a bill by accepting it engages that he will, on due presentment, pay the bill according to the tenor of his acceptance, if it is not paid by the drawee, provided it has been duly presented for payment, and protested for non-payment, and that he receives notice of these facts.

"(2) The acceptor for honour is liable to the holder and to all parties to the bill subsequent to the party for whose honour he has accepted."

As to presentment for payment to an acceptor for honour see Section 67 under PRESENTMENT FOR PAYMENT. (See ACCEPTANCE, BILL OF EXCHANGE.)

ACCEPTANCE, GENERAL. When a drawee writes his name across a bill agreeing to the order of the drawer, it is called an acceptance of the bill. The Bills of Exchange Act, 1882, Section 19, defines two kinds of acceptances—

"(1) An acceptance is either (*a*) general or (*b*) qualified. (See ACCEPTANCE, QUALIFIED.)

"(2) A general acceptance assents without qualification to the order of the drawer.

"(*c*) . . . An acceptance to pay at a particular place is a general acceptance, unless it expressly states that the bill is to be paid there only and not elsewhere."

The following are specimens of general acceptances—

John Brown.

Accepted, John Brown.

Accepted, John Brown, 2, King Street, Leeds.

Accepted, payable at X & Y Bank, Ltd., Leeds, John Brown.

Sighted, June 16, John Brown, Leeds.

Accepted, payable at A & B Bank, Ltd., London, per pro. John Brown, W. Robinson.

A holder of a general acceptance may present it to the acceptor himself, but, if there is a place of payment mentioned on the bill, unless it is presented at that place he will lose his recourse against all the other parties to the bill. (See ACCEPTANCE, ACCEPTANCE QUALIFIED, BILL OF EXCHANGE.

ACCEPTANCE LEDGER. The ledger in which are entered, under the customer's name, particulars of bills accepted by the bank on his behalf.

ACCEPTANCE OF CHEQUES. (See CERTIFICATION OF CHEQUES.)

ACCEPTANCE, QUALIFIED. An acceptance is either general (see ACCEPTANCE, GENERAL) or qualified. Section 19 of the Bills of Exchange Act, 1882, defines a qualified acceptance as follows—

"(2) . . . A qualified acceptance in express terms varies the effect of the bill as drawn.

"In particular an acceptance is qualified which is—

"(*a*) conditional, that is to say, which makes payment by the acceptor dependent on the fulfilment of a condition therein stated:

"(*b*) partial, that is to say, an acceptance to pay part only of the amount for which the bill is drawn:

"(*c*) local, that is to say, an acceptance to pay only at a particular specified place:

"An acceptance to pay at a particular place is a general acceptance, unless it expressly states that the bill is to be paid there only and not elsewhere:

"(*d*) Qualified as to time:

"(*e*) The acceptance of some one or more of the drawees, but not of all."

With reference to an acceptance "qualified as to time," where a bill is drawn payable at sight and is accepted payable, say, three months after date, the bill, in the opinion of the Board of Inland Revenue, shall be stamped in accordance with the terms of the bill as drawn, but it is possible that a court might come to a different conclusion. In Sir Mackenzie Chalmers's book on *Bills of Exchange* attention is drawn to the possible effect of the Stamp Act in invalidating such an acceptance.

The following are specimens of qualified acceptances—

Conditional. "Accepted, payable on delivery of bills of lading. J. Brown."

Partial. Bill drawn for £100. "Accepted for £50 only. J. Brown."

Local. "Accepted, payable at the X & Y Bank, Ltd., Leeds, and there only. J. Brown." In order to charge the acceptor and other parties, the bill must be presented for payment at the place named.

As to time. Bill drawn at three months' date. "Accepted, payable at six months' date. J. Brown."

Not accepted by all the drawees. Bill drawn on W. Brown, J. Jones, and W. Robinson. "Accepted, payable at X & Y Bank, Ltd. W. Robinson." In this case W. Robinson is liable to pay the bill.

The duties of the holder, the drawer, or the indorser of a qualified acceptance are set forth in Section 44 as follows—

"(1) The holder of a bill may refuse to take a qualified acceptance, and if he does not obtain an unqualified acceptance may treat the bill as dishonoured by non-acceptance.

"(2) Where a qualified acceptance is taken, and the drawer or an indorser has not expressly or impliedly authorised the holder to take a qualified acceptance, or does not subsequently assent thereto, such drawer or indorser is discharged from his liability on the bill.

"The provisions of this subsection do not apply to a partial acceptance, whereof due notice has been given. Where a foreign bill has been accepted as to part, it must be protested as to the balance.

"(3) When the drawer or indorser of a bill receives notice of a qualified acceptance, and does not within a reasonable time express his dissent to the holder he shall be deemed to have assented thereto."

Where by the terms of a qualified acceptance, presentment for payment is required, the acceptor, in the absence of an express stipulation to that effect, is not discharged by the omission to present the bill for payment on the day that it matures. (Section 52 (2).) If a bill be accepted with a qualified acceptance as to place, the holder cannot sue the acceptor before he has presented the bill for payment.

A qualification of an acceptance must be in clear and unequivocal terms, so that any person taking the bill could not, if he acted reasonably, fail to understand that it was accepted subject to an express qualification. (*Decroix* v. *Meyer* (1890), 25 Q.B.D. 343.)

ACCEPTANCE REGISTER. The book in which are kept full particulars of all bills accepted by the bank for customers.

ACCEPTILATION. A formal discharge or release from a debt, the discharge being granted gratuitously or for a trifling payment.

ACCEPTING HOUSES. Financial houses which specialise in accepting bills drawn on them under credits established in favour of approved customers. The accepting house is an important institution in the Money Market, and came into being over a century ago, when leading merchants allowed smaller traders to draw on them in order that the superior quality of their acceptance would facilitate negotiation of the bills. This origin is still seen in the description "merchant banker" sometimes given to some accepting houses. To-day accepting houses also deal in loan issues, deposits, and other financial operations. (See also DOCUMENTARY CREDIT.)

ACCEPTOR. When the drawee of a bill (that is the person to whom the bill is addressed) agrees to the order of the drawer, he shows his assent by signing his name across the bill, that is, he accepts it, and when that is done he is called the acceptor. The acceptor is the person who is expected to pay the bill at maturity.

In applying the provisions of Part IV of the Bills of Exchange Act, 1882, dealing with Promissory Notes, the maker of a note is to be deemed to correspond with the acceptor of a bill. If there are several acceptors of a bill they can only be liable jointly, but in the case of a promissory note the makers may be liable jointly, or jointly and severally, according to the wording of the note.

An acceptor is not discharged through any failure of a holder to present the bill to him at maturity for payment. He is liable thereon for six years from its maturity. If an acceptor becomes bankrupt, his acceptances should be withdrawn by any customer for whom they have been discounted, though legally the withdrawal cannot be enforced before the bills mature. (See ACCEPTANCE, BILL OF EXCHANGE.)

"The position of the acceptor of a bill of exchange with reference to subsequent holders is very different from that of a customer with reference to his banker in the case of a cheque. In the latter case, there is a definite contractual relation involving the obligation to take reasonable precautions." "There is no such connection between the drawer or acceptor and

possible future indorsees of a bill of exchange." (*London Joint Stock Bank, Ltd.* v. *Macmillan and Arthur*, [1918] A.C. 777. See under ALTERATIONS.)

ACCEPTORS' LEDGER. A separate account is opened in this ledger for each acceptor of bills discounted by the bank, so that the banker may see at a glance to what extent the acceptances of any person or firm have been discounted. In considering whether a bill should be discounted it is, of course, very important to know the amount for which the acceptor is already liable.

ACCOMMODATION BILL. A bill to which a person, called an accommodation party, puts his name to oblige or accommodate another person without receiving any consideration for so doing. The position of such a party is, in fact, that of a surety or guarantor. Bills of this type are commonly called "kites," or "windmills," or "windbills." A may accept a bill for the accommodation of B the drawer, who is in need of money. A receives no consideration and does not expect to be called upon to pay the bill when due. B raises the necessary funds by discounting the bill, expecting that, at maturity, he will be in a position to meet the bill himself. If, however, he fails to do so, a holder for value, even though he knew it was an accommodation bill when he took it, can sue the acceptor and prior indorsers. But until value has been given, no one is liable on such a bill. When a banker discounts an accommodation bill he becomes a holder for value.

The Bills of Exchange Act, 1882, Section 28, defines an accommodation bill and the liability of an accommodation party as follows—

"(1) An accommodation party to a bill is a person who has signed a bill as drawer, acceptor, or indorser, without receiving value therefor, and for the purpose of lending his name to some other person.

"(2) An accommodation party is liable on the bill to a holder for value; and it is immaterial whether, when such holder took the bill, he knew such party to be an accommodation party or not."

By Section 46 (2), presentment for payment is dispensed with—

"(*c*) As regards the drawer, where the drawee or acceptor is not bound, as between himself and the drawer, to accept or pay the bill, and the drawer has no reason to believe that the bill would be paid if presented.

"(*d*) As regards an indorser, where the bill was accepted or made for the accommodation of that indorser and he has no reason to expect that the bill would be paid if presented."

Notice of dishonour is dispensed with, by Section 50 (2)—

"(*c*) (4) Where the drawee or acceptor is as between himself and the drawer under no obligation to accept or pay the bill;

"(*d*) As regards the indorser,

"(3) Where the bill was accepted or made for his accommodation."

But to preserve the holder's rights against any prior parties the bill should be presented for payment at maturity.

By Section 59 (3):—"Where an accommodation bill is paid in due course by the party accommodated, the bill is discharged."

Where a banker discounted a bill for the drawer, a customer, and was informed, after the bill was dishonoured, that it was an accommodation bill, and the banker agreed, at the drawer's request, not to apply to the acceptor but to depend upon him (the drawer), and his account afterwards showed a credit balance larger than the amount of the bill, it was held in *Marsh* v. *Houlditch* (an unreported case tried in 1818, and cited in Chitty, *Bills of Exchange*, 11th ed., p. 290), that the banker was bound to have applied the balance in payment of the bill and that the acceptor was discharged. In his judgment, Mr. Justice Abbott said: "The banking account of the drawer with the plaintiffs having at one time, after the bill was due, been in his favour to a larger amount than the bill, the plaintiffs (the bankers) were bound to apply the balance in discharge of that bill, and could not keep it as a security for a fluctuating balance which might ultimately become due to them." (See BILL OF EXCHANGE.)

ACCOMMODATION PARTY. The person who signs the bill as drawer, acceptor, or indorser, without receiving any value therefor, for the purpose of accommodating some other person. An accommodation party is liable to a holder for value. (See ACCOMMODATION BILL.)

ACCORD AND SATISFACTION. The substitution of one agreement for another, one party to a contract being willing to waive his claim under the contract for something different.

There cannot be a good accord and satisfaction of the whole of a debt by payment

of part unless there be valuable consideration for giving up the remainder. The delivery and acceptance in satisfaction of a negotiable instrument for a less sum than the total sum due is good accord and satisfaction—the consideration being the getting of something different from legal tender in the shape of a negotiable instrument.

ACCOUNT DAY. Otherwise known as Settling Day or Pay Day. The fifth and final day in each twice monthly Stock Exchange settlement, when securities bought for the Account are delivered, payment for purchase made, and differences settled. Since January, 1947, Account Day is on a Tuesday. (See SETTLING DAYS.)

"ACCOUNT PAYEE." These words, or their equivalent, such as "a/c A.B.," are frequently added to the crossing of a cheque, with the idea of safeguarding it in transmission. The phrase has no mention in the Bills of Exchange Act, 1882, and does not render a cheque not transferable. (*National Bank* v. *Silke*, [1891] 1 Q.B. 435.) Furthermore, the words have no effect on the negotiable quality of a cheque. (*A. L. Underwood, Ltd.* v. *The Bank of Liverpool & Martins, Ltd.* (1924), 40 T.L.R. 302.)

The efficacy of the phrase lies in its warning effect on a collecting banker, for the collection of a cheque bearing an a/c payee crossing for anyone but the payee will enable the latter to claim damages for conversion if the cheque has been used in fraud of him. It has been held that the collection of a cheque so crossed for someone other than the payee is negligence disentitling the banker to the protection of Section 82, Bills of Exchange Act, 1882. (*Bevan* v. *National Bank, Ltd.* (1907), 23 T.L.R. 65; *House Property Co. of London, Ltd. & Others* v. *London County & Westminster Bank, Ltd.* (1915), 31 T.L.R. 479.) But where an English bank collected a cheque crossed "a/c payee" for a foreign banking correspondent who remitted it for credit in its account in London and the cheque had been paid into the foreign bank by one of its customers in fraud of the payee, it was held that the English bank had not acted negligently. (*Importers Co., Ltd.* v. *Westminster Bank, Ltd.* (1927), 43 T.L.R. 325.)

The fact that a cheque is payable to a specified person or *to bearer* and crossed "a/c payee" does not minimise the significance of the words.

The paying banker is not concerned with the special features of an a/c payee crossing, and evidence, in the shape of further indorsements, that the cheque has not gone to the payee's account does not put him upon inquiry.

An uncrossed cheque marked "a/c payee" and presented across the counter for payment should not be paid.

ACCOUNTABLE RECEIPT. A receipt given for moneys or goods which have to be subsequently accounted for, such as a deposit receipt, a safe custody receipt. A fraudulent entry in a pass book has been held to be a forgery of an accountable receipt.

ACCOUNTS. See CURRENT ACCOUNT, DEPOSIT ACCOUNT.

ACCOUNTS OPENED AND CLOSED BOOK. This book, as its name implies, contains a complete list of all accounts which have been opened and of those which have been closed, the date of opening or closing, and the reason for closing, if known, being given in each case.

ACCREDITEE. A person entitled to credit. Thus the holder of a circular letter of credit (*q.v.*) is sometimes termed the accreditee.

ACCRUED INTEREST. Interest to which a banker or a customer is entitled, but which is not actually received till a later date. At the end of a half-year, a banker, before ascertaining his profits, provides for the interest which has accrued up to date, and for which he is liable, on the outstanding deposit accounts; he also takes into account the interest which has accrued upon investments or loans, and to which he is entitled, though the actual receipt of the dividends or interest will not take place till some date in the next half-year.

ACKNOWLEDGMENT OF PRODUCTION OF DEEDS. (See ABSTRACT OF TITLE, TITLE DEEDS.)

A COMPTE. French, on account.

ACQUITTANCE. The document which releases a person from a debt or obligation.

ACT OF BANKRUPTCY. When a debtor commits an act of bankruptcy, the Court may, on a bankruptcy petition being presented either by a creditor or by the debtor make a receiving order for the protection of the estate. The Act must have been committed within three months before the presentation of the petition.

The various acts of bankruptcy are detailed in Section 1 of the Bankruptcy Act, 1914—

"(1) A debtor commits an act of bankruptcy in each of the following cases—

"(*a*) If in England or elsewhere

he makes a conveyance or assignment of his property to a trustee or trustees for the benefit of his creditors generally:

"(*b*) If in England or elsewhere he makes a fraudulent conveyance, gift, delivery, or transfer of his property, or of any part thereof:

"(*c*) If in England or elsewhere he makes any conveyance or transfer of his property or any part thereof, or creates any charge thereon, which would under this or any other Act be void as a fraudulent preference if he were adjudged bankrupt:

"(*d*) If with intent to defeat or delay his creditors he does any of the following things, namely, departs out of England, or being out of England remains out of England, or departs from his dwelling-house, or otherwise absents himself, or begins to keep house:

"(*e*) If execution against him has been levied by seizure of his goods under process in an action in any court, or in any civil proceeding in the High Court, and the goods have been either sold or held by the sheriff for twenty-one days:

Provided that, where an interpleader summons has been taken out in regard to the goods seized, the time elapsing between the date at which such summons is taken out and the date at which the proceedings on such summons are finally disposed of, settled, or abandoned, shall not be taken into account in calculating such period of twenty-one days:

"(*f*) If he files in the Court a declaration of his inability to pay his debts or presents a bankruptcy petition against himself:

"(*g*) If a creditor has obtained a final judgment or final order against him for any amount, and, execution thereon not having been stayed, has served on him in England, or, by leave of the Court, elsewhere, a bankruptcy notice under this Act, and he does not, within seven days after service of the notice, in case the service is effected in England, and in case the service is effected elsewhere, then within the time limited in that behalf by the order giving leave to effect the service, either comply with the requirements of the notice, or satisfy the Court that he has a counter-claim set-off or cross demand, which equals or exceeds the amount of the judgment debt or sum ordered to be paid, and which he could not set up in the action in which the judgment was obtained, or the proceedings in which the order was obtained:

For the purposes of this paragraph and of Section 2 of this Act, any person who is, for the time being, entitled to enforce a final judgment or final order, shall be deemed a creditor who has obtained a final judgment or final order,

"(*h*) If the debtor gives notice to any of his creditors that he has suspended, or that he is about to suspend, payment of his debts."

The phrase "begins to keep house" in sub-section (*d*) means to shut himself up in the house, or to refuse to see his creditors with the intention of delaying them.

An available act of bankruptcy means any act of bankruptcy available for a bankruptcy petition at the date of the presentation of the petition on which the receiving order is made (Section 167).

It is often difficult to decide whether a certain state of things does or does not constitute an act of bankruptcy. A mere statement by a debtor that, in certain events, he will be obliged to suspend payment is not, of itself, an act of bankruptcy. Where a doctor, through his solicitor, sent a circular letter calling together a meeting

of his creditors it was held that the position of a non-trader, such as a doctor, differed greatly from that of a trader, and that in the case of a non-trader a declaration of inability to pay his debts was not necessarily a notice to his creditors of an intention to suspend payment. (*In re a Debtor; Ex parte the Petitioning Creditors*, 1912, 106 L.T. 812.)

In *Anglo-South American Bank, Ltd.* v. *Urban District Council of Withernsea* (1924, K.B., unreported), a debtor had admitted at a creditors' meeting that he was insolvent and asked his creditors to accept a composition. He refused to file his petition and indicated that his intention was to carry on as long as he could and not to suspend payment of his debts generally unless he was forced into bankruptcy by his creditors. After the meeting he obtained money from the plaintiffs by means of the defendant's cheque. It was held that there was no act of bankruptcy, and that the plaintiffs were *bona fide* holders for value without notice of any defect in the title of the debtor. Greer, J., in the course of his judgment, referring to paragraph (*h*) in the above Section, said, "It seems reasonably clear—

"(1) That the bankrupt's statement must be something more than a mere casual remark. It must be a statement that by its form appears to be an intentional statement by the bankrupt of something that he has already done or something he intends to do. This, at least, is involved in the use of the word 'notice.'

"(2) That a statement by or on behalf of the debtor that he is insolvent, whether the deficiency be great or small, is not of itself an act of bankruptcy, unless it amounts to a statement of inability to pay each and every one of his creditors.

"(3) That a statement of insolvency may be made on such an occasion and with such surrounding circumstances that a reasonably minded creditor would understand it as an intimation that the debtor had suspended, or was about to suspend, payment of his debts generally, and if it be so made it is an act of bankruptcy."

By an act of bankruptcy a bill which has been given in payment of a debt becomes immediately payable, and where any person liable upon a bill commits an act of bankruptcy a holder can present a petition upon his debt. (*Ex parte Raatz*, [1897] 2 Q.B. 80.)

In a bankruptcy, the whole of the bankrupt's property devolves on the trustee and the trustee's title to that property relates back to the act of bankruptcy on which the receiving order is made, or if there are more acts of bankruptcy than one, to the time of the first of the acts of bankruptcy committed within three months next preceding the date of the presentation of the bankruptcy petition; but no bankruptcy petition, receiving order or adjudication shall be rendered invalid by reason of any act of bankruptcy anterior to the debt of the petitioning creditor. (See Section 37, under ADJUDICATION OF BANKRUPTCY.)

A payment by a bankrupt to any of his creditors or a payment to a bankrupt is not invalidated by bankruptcy provided that the payment takes place before the date of the receiving order, and provided that the person (other than the debtor) to, by, or with whom the payment was made has not, at the time of the payment, notice of an available act of bankruptcy committed by the bankrupt before that time. (See Section 45, under BANKRUPTCY.)

By Section 46—

Validity of Certain Payments to Bankrupt and Assignee.

"A payment of money, or delivery of property, to a person subsequently adjudged bankrupt, or to a person claiming by assignment from him, shall, notwithstanding anything in this Act, be a good discharge to the person paying the money or delivering the property, if the payment or delivery is made before the actual date on which the receiving order is made and without notice of the presentation of a bankruptcy petition, and is either pursuant to the ordinary course of business or otherwise *bona fide*."

By this Section a payment of money to a person subsequently adjudged bankrupt, or to a person claiming by assignment from him, is protected if the payment is made before the date of the receiving order and without notice of the presentation of a bankruptcy petition. A banker is thus relieved from the difficulty of deciding whether an act of bankruptcy has, or has not, been committed. It is to be noted, however, that the payment must, apparently, be made to the person himself or to a person claiming by assignment from him. Payment of a cheque, drawn by a person who is subsequently adjudged bankrupt, in favour of a third party does not come within the

words of this Section. The payee of a bankrupt's cheque is not a person claiming by assignment from the bankrupt. A banker is protected by this Section in paying over any balance on a customer's account to the trustee under a deed of assignment.

With regard to the payment of cheques to third parties, Sir John Paget holds that it is outside the protection altogether. He states (Gilbart Lectures, 1914, No. 1): "It is no longer a question of whether you have had notice of an act of bankruptcy, but whether there has been one. If there has, and you pay cheques, and bankruptcy results, you are liable. If you hear rumours, or get notice, you have got to face the alternative of dishonouring cheques with the risk of an action, or honouring them and having to pay the money over again."

On the other hand, opinions have been given that Section 46 does protect a banker in the payment of cheques to third parties. (See Mr. Stable, K.C., in *Journal of the Institute of Bankers*, Vol. LVII, p. 147.)

In *Re Wigzell, ex parte the Trustee* ((1921), 37 T.L.R. 373), a debtor, against whom a receiving order was made, obtained an order staying the advertisement pending an appeal, which was subsequently dismissed. The debtor was afterwards adjudicated bankrupt. After the receiving order, payments into his banking account were made by the debtor, and payments out were also made, the bankers not knowing of the receiving order. Held that the effect of Sections 18, 37 (see under ADJUDICATION OF BANKRUPTCY) and 38 was to make the money paid into the account the property of the trustee, and that these transactions were not protected by Sections 45 or 46 (see above). The bankers were not entitled to credit themselves with anything paid out to the bankrupt during the same period. This decision was affirmed by the Court of Appeal (1921, 37 T.L.R. 526). Younger, L.J., in his judgment said that the affirmation does not preclude the bank from claiming the right, by a proper application, to trace into the pockets of persons, who, but for the payment to them, would have been creditors in the bankruptcy, the sums so paid to them, to the intent that the bank may stand in the shoes of those persons so paid and receive from the trustee in bankruptcy the dividend to which but for the payment they would have been entitled.

Section 4 of the Bankruptcy (Amendment) Act, 1926, partially remedies this harshness; its effect is that where money has been paid to a third party in ignorance of a receiving order and before its advertisement, the trustee must, where reasonably practical, recover such money from such third party.

By the Deeds of Arrangement Act, 1914—

"Section 24 (1). If the trustee under a deed of arrangement, which either is expressed to be or is in fact for the benefit of the debtor's creditors generally, serves in the prescribed manner on any creditor of the debtor notice in writing of the execution of the deed and of the filing of the statutory declaration certifying the creditors' assents, with an intimation that the creditor will not, after the expiration of one month from the service of the notice, be entitled to present a bankruptcy petition against the debtor founded on the execution of the deed, or on any other act committed by him in the course or for the purpose of the proceedings preliminary to the execution of the deed, as an act of bankruptcy, that creditor shall not, after the expiration of that period, unless the deed becomes void, be entitled to present a bankruptcy petition against the debtor founded on the execution of the deed, or any act so committed by him as an act of bankruptcy." (See DEED OF ARRANGEMENT.)

(See ASSIGNMENT FOR BENEFIT OF CREDITORS, BANKRUPTCY, FRAUDULENT CONVEYANCE, FRAUDULENT PREFERENCE, RECEIVING ORDER.)

ACT OF GOD. These words (used in a Bill of Lading (*q.v.*), and a Charter Party (*q.v.*)) mean a sudden or violent act of nature (such as a storm, lightning) which could not reasonably be foreseen or provided against by ordinary skill or diligence. A person is not liable for damage occasioned by an Act of God.

ACT OF HONOUR. Where a bill has been protested for dishonour by non-acceptance, any person, not being a party already liable thereon, may accept the bill *supra* protest, for the honour of any person liable thereon. Such an acceptance is usually attested by a notarial act of honour recording the process, but this is not necessary. (See ACCEPTANCE FOR HONOUR.)

Where a bill has been protested for non-payment, any person may pay it *supra* protest for the honour of any party liable thereon. Such payment must be attested by a notarial act of honour, which may be appended to the protest. (See PAYMENT FOR HONOUR.)

ACTION. A civil proceeding in a court of law, commenced by writ, or in such other manner as may be prescribed by rules of

court. Where a creditor has obtained judgment against a debtor, the court provides means of enforcing it. (See JUDGMENT CREDITOR.)

ACTIVE BONDS. Bonds upon which a fixed interest is payable from the date of issue. (See DEFERRED BONDS.)

ACTIVE CIRCULATION. The notes which are in circulation, that is, notes which have been issued from a bank of issue and are in the hands of the public, as distinguished, for example, from those held by the Banking Department of the Bank of England as part of the reserve.

ACTIVE PARTNER. A member of a partnership who takes an active part in the management of the business, as distinguished from a dormant or sleeping partner, who simply supplies capital and is not actively engaged in the work of the firm.

ACTUARY. An official in an insurance office skilled in the calculation of the values of life interests, and of the rates of premiums for life insurance, annuities, and other matters connected with the expectancy of life. The chief official in a savings bank.

ADHESIVE STAMPS. By the Stamp Act, 1891—

"Section 7. Any stamp duties of an amount not exceeding two shillings and sixpence upon instruments which are permitted by law to be denoted by adhesive stamps not appropriated by any word or words on the face of them to any particular description of instrument, and any postage duties of the like amount, may be denoted by the same adhesive stamps."

"Section 9. (1) If any person—

"(*a*) Fraudulently removes or causes to be removed from any instrument any adhesive stamp, or affixes to any other instrument or uses for any postal purpose any adhesive stamp which has been so removed, with intent that the stamp may be used again, or

"(*b*) Sells or offers for sale, or utters, any adhesive stamp which has been so removed, or utters any instrument, having thereon any adhesive stamp which has to his knowledge been so removed as aforesaid;

he shall, in addition to any other fine or penalty to which he may be liable, incur a fine of fifty pounds."

By the Revenue Act, 1898, Section 7, (4): The expression "instrument" in Section 9 of the Stamp Act, 1891, includes any postal packet within the meaning of The Post Office Protection Act, 1884.

The stamp duty may (or must) be denoted by adhesive stamps in the following cases—

Agreement, where the duty is sixpence only.

Bill of Exchange, Inland (on demand, at sight, on presentation, or not exceeding three days after date or sight).

Bill of Exchange, Foreign (on demand or at sight, or not exceeding three days after date or sight, a postage stamp; others require "appropriated" adhesive stamps). On cheques drawn abroad, the ordinary impressed stamp is sufficient.

Cheque.

Contract Note (appropriated stamp).

Lease of any dwelling-house, or part thereof, for a term not exceeding a year at a rent not exceeding £10 per annum.

Lease of any furnished dwelling-house or apartments for a term less than a year.

Memorandum of deposit of marketable securities.

National Insurance Cards (appropriated stamps).

Policy of Insurance where the duty is one penny, other than sea or life insurance.

Proof of Debt in Bankruptcy (an appropriated stamp).

Receipts

(See APPROPRIATED STAMPS, CANCELLATION OF STAMPS, STAMP DUTIES.)

ADJUDICATION IN BANKRUPTCY. Where a receiving order has been made against a debtor (see RECEIVING ORDER), though he is not at that date adjudged bankrupt, it means that, unless a composition or scheme of arrangement is accepted by the creditors, the Court will, shortly, make an order adjudicating the debtor bankrupt.

Section 18 of the Bankruptcy Act, 1914, enacts—

"(1) Where a receiving order is made against a debtor, then, if the creditors at the first meeting or any adjournment thereof by ordinary resolution resolve that the debtor be adjudged bankrupt, or pass no resolution, or if the creditors do not meet, or if a composition or scheme is not approved in pursuance of this Act within fourteen days after the

conclusion of the examination of the debtor or such further time as the Court may allow, the Court shall adjudge the debtor bankrupt; and thereupon the property of the bankrupt shall become divisible among his creditors and shall vest in a trustee.

"(2) Notice of every order adjudging a debtor bankrupt, stating the name, address, and description of the bankrupt, the date of the adjudication, and the Court by which the adjudication is made, shall be gazetted and advertised in a local paper in the prescribed manner, and the date of the order shall, for the purposes of this Act, be the date of the adjudication."

The Court has power in certain cases to annul an adjudication. Section 29 provides—

"(1) Where in the opinion of the Court a debtor ought not to have been adjudged bankrupt, or where it is proved to the satisfaction of the Court that the debts of the bankrupt are paid in full, the Court may, on the application of any person interested by order annul the adjudication.

"(3) Notice of the order annulling an adjudication shall be forthwith gazetted and published in a local paper."

The creditors may, if they think fit, at any time after a debtor is adjudicated a bankrupt, entertain a proposal for a composition in satisfaction of the debts due to them or for a scheme of arrangement of the bankrupt's affairs (Section 21 (1)).

Section 37 (1), relates to the date when a bankruptcy is deemed to commence—

"The bankruptcy of a debtor, whether it takes place on the debtor's own petition or upon that of a creditor or creditors, shall be deemed to have relation back to, and to commence at, the time of the act of bankruptcy being committed on which a receiving order is made against him, or, if the bankrupt is proved to have committed more acts of bankruptcy than one, to have relation back to, and to commence at, the time of the first of the acts of bankruptcy proved to have been committed by the bankrupt within three months next preceding the date of the presentation of the bankruptcy petition; but no bankruptcy petition, receiving order, or adjudication shall be rendered invalid by reason of any act of bankruptcy anterior to the debt of the petitioning creditor."

See Section 46, Bankruptcy Act, 1914, under ACT OF BANKRUPTCY as to validity of certain payments to the bankrupt or his assignee. (See also Section 45 under BANKRUPTCY.)

ADJUDICATION STAMPS. Where a doubt exists as to the stamp duty with which any instrument is chargeable, the opinion of the Board of Inland Revenue may be obtained as to the proper stamp. The instrument itself, and also a sufficient abstract thereof, must be lodged with the Controller of Stamps, Bush House, and a separate abstract must be lodged with each deed. No document can be received for adjudication until it has been executed by all necessary parties. A security for advances without limit cannot be the subject of adjudication. Where it is claimed that collateral, auxiliary, additional, or substituted security duty only is payable, the principal or primary security must be produced before adjudication. In the case of a transfer of mortgage, the amount of interest in arrear (if any) at the date of transfer must be stated.

The regulations of the Stamp Act, 1891, with regard to these stamps are as follows—

"Section 12. (1) Subject to such regulations as the Commissioners may think fit to make, the Commissioners may be required by any person to express their opinion with reference to any executed instrument upon the following questions:

(*a*) Whether it is chargeable with any duty;

(*b*) With what amount of duty it is chargeable.

"(2) The Commissioners may require to be furnished with an abstract of the instrument, and also with such evidence as they may deem necessary, in order to show to their satisfaction whether all the facts and circumstances affecting the liability of the instrument to duty, or the amount of the duty chargeable thereon, are fully and truly set forth therein.

"(3) If the Commissioners are of opinion that the instrument is not chargeable with any duty, it may be stamped with a particular stamp denoting that it is not chargeable with any duty.

"(4) If the Commissioners are of opinion that the instrument is chargeable

with duty, they shall assess the duty with which it is in their opinion chargeable, and when the instrument is stamped in accordance with the assessment it may be stamped with a particular stamp denoting that it is duly stamped.

"(5) Every instrument stamped with the particular stamp denoting either that it is not chargeable with any duty, or is duly stamped, shall be admissible in evidence, and available for all purposes notwithstanding any objection relating to duty.

"(6) Provided as follows—

(*a*) An instrument upon which the duty has been assessed by the Commissioners shall not, if it is unstamped or insufficiently stamped, be stamped otherwise than in accordance with the assessment;

(*b*) Nothing in this Section shall extend to any instrument chargeable with *ad valorem* duty, and made as a security for money or stock without limit; or shall authorise the stamping after the execution thereof of any instrument which by law cannot be stamped after execution;

(*c*) A statutory declaration made for the purpose of this Section shall not be used against any person making the same in any proceeding whatever, except in an inquiry as to the duty with which the instrument to which it relates is chargeable; and every person by whom any such declaration is made shall, on payment of the duty chargeable upon the instrument to which it relates, be relieved from any fine or disability to which he may be liable by reason of the omission to state truly in the instrument any fact or circumstance required by this Act to be stated therein."

By Section 13 any person who is dissatisfied with the assessment of the Commissioners may, within twenty-one days after the date of the assessment, and on payment of duty in conformity therewith, appeal to the High Court. If the assessment is confirmed, the court may make an order for payment to the Commissioners of the costs incurred by them in relation to the appeal.

By Section 74 (2) of the Finance (1909–10) Act, 1910, notwithstanding anything in Section 12 of the Stamp Act, 1891 (quoted above), the Commissioners may be required to express their opinion under that section on any conveyance or transfer operating as a voluntary disposition *inter vivos*, and no such conveyance or transfer shall be deemed to be duly stamped unless the Commissioners have expressed their opinion thereon in accordance with that Section.

Section 43 of the Finance Act, 1942, provides, however, that Section 74 (2) of the Finance (1909–10) Act, 1910, shall not apply to the documents exempted from *ad valorem* duty, and such documents do not require adjudication.

ADMINISTRATION ORDER. An administration order is made by the county court against a debtor who is unable to pay an amount for which judgment has been obtained in a county court. An administration order is made only when the debtor's total indebtedness does not exceed £50.

Section 122 of the Bankruptcy Act, 1883, provides—

"(1) Where a judgment has been obtained in a county court and the debtor is unable to pay the amount forthwith, and alleges that his whole indebtedness amounts to a sum not exceeding fifty pounds, inclusive of the debt for which the judgment is obtained, the county court may make an order providing for the administration of his estate, and for the payment of his debts by instalments or otherwise, and either in full or to such extent as to the county court under the circumstances of the case appears practicable, and subject to any conditions as to his future earnings or income which the court may think just.

"(2) The order shall not be invalid by reason only that the total amount of the debts is found at any time to exceed fifty pounds, but in such case the county court may, if it thinks fit, set aside the order.

"(3) Where, in the opinion of the county court in which the judgment is obtained, it would be inconvenient

that the court should administer the estate, it shall cause a certificate of the judgment to be forwarded to the county court in the district of which the debtor or the majority of the creditors resides or reside, and thereupon the latter county court shall have all the powers which it would have under this Section, had the judgment been obtained in it."

With regard to the administration of a deceased insolvent's estate, see DEATH OF INSOLVENT PERSON; BANKRUPTCY.

ADMINISTRATOR. Where a deceased person has left no will, the court appoints an administrator or administrators, usually the next of kin, to wind up his estate. If the deceased has left a will, but does not name any one to act as executor, or the executor who was named died before the testator or refuses to act, the court appoints an administrator granting him "letters of administration with the will annexed" (called administrator *cum testamento annexo*).

A banker does not allow any dealings with the account of a customer who has died intestate, or with any securities which may have been left in his hands by the deceased, until letters of administration have been granted. When letters have been exhibited, it is customary for the administrator to sign a cheque transferring any credit balance on the deceased's account to an account in his own name as administrator. If, however, the deceased's account is overdrawn, it will be paid off by the administrator, as may be arranged; the banker cannot transfer, from any account which the administrator may have opened, a sum to clear off the debt upon the deceased's account.

Upon the death of the sole or last surviving administrator, his executors, if any, do not undertake the duties; fresh letters of administration must be taken out. (See ADMINISTRATOR DE BONIS NON.)

An administrator winds up the deceased's affairs according to law, whilst an executor settles them according to the provisions of the will. In an administration *cum testamento annexo* the administrator has, like an executor, to carry out the provisions of the will. An administrator can borrow on land or any other security for the purpose of administering the estate, such purpose to include anything which may reasonably be held as likely to effect an improvement of the assets of the estate; e.g. (*a*) the carrying on of a business in order to realise goodwill, or (*b*) the purchase of a freehold so as to realise the leasehold. In the two cases cited the business cannot be carried on or the freehold held *ad infinitum*, but each must be sold within a reasonable time—a reasonable time being a question of the facts of the particular case.

Security consisting of assets of the estate must constitute a charge on specific assets. A banker must not be a party to any misadministration; if circumstances arise where he is put upon inquiry and such inquiry is not made, his security may be thereby avoided. Where security becomes void by reason of improper administration which was, or should have been, known to the lender, he (the lender) has a personal remedy against the borrower but no right of recovery against the general assets of the estate. Where beneficiaries of the estate are minors, a business cannot be carried on until such time as they become of age and any borrowing for the purpose of so carrying on the business would be *ultra vires* and any security held void if the banker had any knowledge, or should have had knowledge, of the facts that the estate was not being properly administered. As to administrators appointed for limited periods, see the succeeding headings. A banker is safe in dealing with an administrator even if a will should, subsequently, be discovered. See the case of *Hewson* v. *Shelley* under LETTERS OF ADMINISTRATION. See the provisions of the Administration of Estates Act, 1925, under PERSONAL REPRESENTATIVES. Executors and administrators are called the personal representatives. (See EXECUTOR, LETTERS OF ADMINISTRATION, MARRIED WOMAN, SYNDIC.)

ADMINISTRATOR AD LITEM. An administrator of a deceased person's estate appointed for the purpose of litigation only.

ADMINISTRATOR CUM TESTAMENTO ANNEXO. i.e. Administrator with the Will Annexed. (See ADMINISTRATOR.)

ADMINISTRATOR DE BONIS NON. A contraction for administrator *de bonis non administratis*, which means administrator of effects not administered. Where an administrator dies, or an executor dies without appointing an executor, and the duties connected with the administration have not been completed, the court will appoint another person, called an administrator *de bonis non*, to complete the winding up of the estate.

ADMINISTRATOR DURANTE ABSENTIA. An administrator appointed to act during the absence abroad of an administrator.

ADMINISTRATOR DURANTE MINORE AETATE. An administrator appointed to act during the minority of the executor or of the person legally entitled to a grant of letters of administration.

ADMINISTRATOR PENDENTE LITE. An administrator appointed to administer an estate pending any suit respecting the validity of a will or any other matter in dispute.

ADMITTANCE. Copyhold was abolished and converted into freehold on 1st January, 1926.

The admittance of a copyholder was signified by the entry upon the court rolls when he was admitted by the lord of the manor as tenant of the copyhold land.

A copy admittance, signed by the Steward of the Manor, was given to the copyholder, which was his evidence of title to the property. (See COPYHOLD.)

AD REFERENDUM. Latin, to be further considered.

AD VALOREM. Latin, according to value.

An *ad valorem* stamp duty is a duty calculated according to the value of the subject matter contained in a document. On a cheque for any amount, a bill payable on demand, or at sight, or on presentation, or not exceeding three days after date or sight, the stamp duty is two pence, but on bills of any other kind and on all promissory notes the duty is an *ad valorem* one, calculated upon a certain scale according to the amount expressed in the document. A promissory note must always be stamped according to its amount, even though drawn on demand, at sight, etc.

The duty is also *ad valorem* upon many other documents—assignments of leases, conveyances, mortgages, transfers of stocks and shares, etc.

By the Stamp Act, 1891—

"Section 6. (1) Where an instrument is chargeable with *ad valorem* duty in respect of—

(*a*) any money in any foreign or colonial currency, or

(*b*) any stock or marketable security,

the duty shall be calculated on the value, on the day of the date of the instrument, of the money in British currency according to the current rate of exchange, or of the stock or security according to the average price thereof.

"(2) Where an instrument contains a statement of current rate of exchange, or average price, as the case may require, and is stamped in accordance with that statement, it is, so far as regards the subject matter of the statement, to be deemed duly stamped, unless or until it is shown that the statement is untrue, and that the instrument is in fact insufficiently stamped."

By the Finance Act, 1899—

"Section 12. (1) Where an instrument other than a bill of exchange or promissory note is charged with an *ad valorem* duty in respect of any money in any foreign or colonial currency, a rate of exchange for which is specified in the schedule to this Act, the stamp duty on that instrument shall, instead of being calculated as provided by Section six of the Stamp Act, 1891, be calculated according to the rate of exchange so specified.

"(2) The Commissioners may substitute, as respects any foreign or colonial currency mentioned in the Schedule to this Act, any rate of exchange for that specified in the Schedule, and may add to the Schedule a rate of exchange for any foreign or colonial currency not mentioned therein, and this Act shall be construed as if any rate of exchange for the time being substituted or added were contained in the said Schedule, and in the case of the substitution of a rate of exchange as if the rate for which the new rate is substituted were omitted from that Schedule.

"(3) Any substitution or addition so made by the Commissioners shall not take effect until it has been advertised in the *London Gazette* for two successive weeks."

ADVANCE NOTE. When a seaman signs his articles of agreement, he may receive an advance note for a month's wages. The note is drawn upon the owner of the vessel and is payable three days after the ship has sailed, to the person named in the note. If the seaman fails to join the ship, the advance note will not, of course, be paid. They are subject to the same duty as Bills of Exchange and were made legal, for sums not exceeding one month's wages, by the Merchant Shipping Act, 1889, Section 2.

ADVANCES. An advance is granted either by way of overdraft upon a current account, or by a loan upon a separate

account, or, in some districts, upon a promissory note. The discounting of bills is practically the same as making an advance upon the security of the bills. (See DISCOUNTING A BILL, PROMISSORY NOTE.)

In considering an application for an advance, a branch manager is influenced by his own personal knowledge of the borrower, by the figures as shown by the certified balance sheet of the customer, and by the history of previous transactions and the various conclusions to be drawn from a careful study of the customer's account. Some of the questions which naturally arise in a banker's mind are: For how long is the advance required? If granted, is it likely to be repaid according to promise? For what purpose is the money required? What security is offered? (See BALANCE SHEET, VALUATION.)

It may be impossible to entertain an application in the form in which it is first made by a customer. Francis E. Steele, in *Present-day Banking*, says: "Anybody can grant, or submit to his Head Office, a perfectly good proposal. Anybody can decline a transaction which is obviously impossible. Where the real skill of a bank manager proves itself is in getting a borrower so to modify an impracticable proposal that it will assume a shape in which it will be acceptable to himself and to his Head Office."

Securities such as second mortgages, reversions, building land, brick fields, shares with a liability attached, etc., are, as a rule, avoided by most bankers. "The most dangerous of all loans," wrote the late J. W. Gilbart, "are those which are made against unmarketable securities, such as mills, ironworks, coal mines, landed property, etc." (See SECOND MORTGAGE.)

The securities most commonly favoured by bankers are first-class stocks and shares, deeds of readily realisable properties, good bearer bonds, guarantees by reliable sureties, and life policies to the extent of the surrender value. (See BEARER BONDS, GUARANTEE, LIFE POLICY, SHARE CAPITAL, TITLE DEEDS.)

When securities are taken, the banker's document of charge should provide for the repayment of the money on demand, or on very short notice. (See BANKER'S MORTGAGE, MEMORANDUM OF DEPOSIT, MORTGAGE.)

With regard to unsecured advances, George Rae in *The Country Banker* puts the position in a most practical way. He supposes £1,000 to be advanced for three months without security and that the customer fails and pays 5s. in the pound. The profit on the transaction, taking all things into account, will not have much exceeded £5. "To secure this modest recompense of reward, you have risked £1,000 and actually lost £750. You will have to make 150 fresh advances of £1,000 each—that is to say, you will have to incur fresh uncovered risks to the amount of £150,000 to redeem your loss." A banker should give particular attention to an account which is overdrawn without security so as to detect any signs of weakness in his customer. The nature of the items in an account often supplies valuable information. Where an account becomes continuously overdrawn, which formerly showed a credit balance at certain times, or cheques are being provided for at the last moment, the banker should be on the alert.

With regard to advances to solicitors and stockbrokers, see SOLICITORS' ACCOUNTS, STOCKBROKERS' LOANS.

In granting a limit a banker should reserve to himself the right to cancel the limit, at any time, if he should deem it necessary. In *Rouse* v. *Bradford Banking Company*, [1894] A.C. 586, Lord Herschell said, at p. 595: "It is not necessary to consider what the rights of the bank were with regard to their debtors when they had agreed to an overdraft. The transaction is, of course, of the commonest. It may be that an overdraft does not prevent the bank who have agreed to give it from at any time giving notice that it is no longer to continue, and that they must be paid their money. This, I think, at least it does: if they have agreed to give an overdraft, they cannot refuse to honour cheques or drafts, within the limit of that overdraft, which have been drawn and put in circulation before any notice to the person to whom they have agreed to give the overdraft that the limit is to be withdrawn. That effect I think it has in point of law; whether it has more than that in point of law it is unnecessary to consider." The length of notice will depend upon what was arranged when the limit was granted; but a limit cannot be withdrawn before the expiration of the period for which it was sanctioned, unless the customer's position, or his security, has greatly changed for the worse.

When an advance is granted in a lump sum on a loan account and credited at

once to a current account, see under SET OFF.

It is not the business of a bank to provide a company or private trader with permanent capital.

In lending upon securities such as land, houses, shares, etc., it is customary to preserve a margin between the value of the security and the amount of the loan or overdraft. A house, for example, may have been recently built at a cost of £500, but a banker would not, as a rule, advance £500 upon it. In a few years the house, in all probability, may not be saleable at all at that figure, particularly at a forced sale. Shares, even though of first-class description, may easily, for various reasons, also fall in value. A prudent banker, therefore, in considering what value of securities he should have for an overdraft or loan, ever bears in mind the uncertainty of values and endeavours to protect himself by lending an amount less than the value of the security at the time the arrangement is made. The difference between the amount lent and the estimated value of the security is the "margin." The extent of the margin will differ according to the nature of the securities and the special circumstances of each case, but if a loan has been granted against shares with, say, a margin of 20 per cent, the banker will watch his securities, and, when they begin to fall and the margin to disappear, will require further securities to be given to restore the margin as agreed upon. The margin may be calculated either upon the value of the securities or upon the amount of the loan. The usual practice is to calculate it upon the value of the securities. The difference of the two methods is shown as follows—

(1)

Value of securities	£10,000
Less 20 per cent	2,000
	£8,000 = Amount to be advanced.

(2)

Amount to be advanced	£8,000
Add 20 per cent	1,600
	£9,600 = Value of securities required.

In each case the amount to be advanced is the same, £8,000, but in the former case the value of the securities will be £10,000, whereas in the latter case the value will be £9,600.

In cases where margins of a certain per cent are required, the simple calculations are—

If the margin is 25 per cent deduct one-fourth from the value of the securities offered, e.g.—

	£2,000
Less one-fourth	500
	£1,500 = Amount to be advanced.

If a loan of £1,500 is applied for, the value of the security required to provide a 25 per cent margin will be one-third of the £1,500 added to that amount, e.g.—

	£1,500
Add one-third	500
	£2,000 = Security required.

If the margin is 20 per cent, on the same principle as above—

Security offered	£1,000
Less one-fifth	200
	£800 = Amount to be advanced.
Loan required	£800
Add one-fourth	200
	£1,000 = Security required.

If the margin is 15 per cent—

Security offered	£1,000
Less 15 per cent	150
	£850 = Amount to be advanced.
Loan required	£850
Add $\frac{15}{85}$ths (or roughly one-sixth)	150
	£1,000 = Security required.

If the margin is 10 per cent—

Security offered	£1,000
Less one-tenth	100
	£900 = Amount to be advanced.
Loan required	£900
Add one-ninth	100
	£1,000 = Security required.

When the amount of the loan required is known, the value of the securities necessary to obtain, say, a margin of 20 per cent is arrived at by adding to the amount of the

loan one-fourth of that loan, the reason being, of course, that when 20 per cent, or one-fifth, is deducted from the value of the securities, the difference (in this case supposed to be the loan) is in eightieths, and if twenty of those eightieths—that is, one-fourth—are added, the amount is restored to the original figure (in this case the value of the securities), e.g.—

	£100	= Security.
Deduct 20 per cent, or one-fifth	= 20	= Margin.
	£80	= Loan.
Add 80ths or one-fourth	= 20	= Margin.
	£100	= Security.

With respect to advances to farmers on their farming stock, see AGRICULTURAL CREDITS ACT, 1928.

ADVICE. When a banker issues a draft, he sends an advice, called a letter of advice, to the banker upon whom the draft has been drawn, giving him particulars of the amount, number, date, and payee, so that, when the instrument is presented for payment, the drawee banker may be able to satisfy himself that the draft is in order. In the absence of an advice, a banker would hesitate to pay a draft.

The word "advice" applies also to many other forms of intimation which a banker in the course of his business has to make to customers, other banks, and his own head office or London agents, such as advices of credits received, payments to be made, bills to be paid, etc. (See STANDING CREDITS.)

ADVICE BOOK. The book in which particulars are entered of all drafts advised as having been drawn upon the Head Office or branches of a bank, or upon its country correspondents, and of acceptances to be paid and other payments to be made by the Head Office.

"ADVISE FATE." Where early notice is required as to the payment, or non-payment, of a cheque, the cheque is sent direct to the banker on whom it is drawn with a request to "advise fate." If a reply is required before return of post, a stamped telegram form should be enclosed for a reply by wire as soon as possible after the cheque is received. A banker is not under any obligation to wire the fate of a cheque, but it is constantly done as a matter of courtesy between bankers. When a banker replies by telegraph that a cheque is paid, the drawer cannot stop payment of the cheque after the dispatch of the telegram.

When a wire is received asking if a certain cheque will be paid when presented, a banker should be careful to qualify an affirmative reply, otherwise he may find that, by the time the cheque is actually presented, the customer's account has altered so as not to admit of its payment, or that payment of the cheque has been stopped by the drawer, or that the balance of the account has been attached by a legal order, and yet he will, if he gave an unqualified reply, be liable to pay it. The reply frequently made by bankers, "Yes, if in order," is, for the above reasons, not a safe one to make. The Council of the Institute of Bankers recommend some such reply being made as, "Would pay if in our hands and in order."

A banker must not set aside or "earmark" a sum out of the customer's balance to meet a cheque which another banker has wired about. The cheque cannot be dealt with till it arrives. (See APPROPRIATION OF PAYMENTS.)

AFFIDAVIT. A written declaration, given on oath, before some person who is entitled to administer an oath, as a solicitor who has been appointed a Commissioner for Oaths, a magistrate, consul, or notary public. The affidavit must give the person's name and address and be signed by him, and be attested by the person before whom it is sworn.

The fee of a Commissioner for Oaths for administering the oath is 2s. 6d., with 1s. 6d. additional for each document attached to the affidavit. Such additional document is known as an "exhibit."

By the Finance Act, 1949, stamp duty on an affidavit was abolished.

The word "affidavit" is Low Latin, and means "has pledged his faith." It was at one time usual for the document to commence thus: Affidavit N. M., etc.

AFFREIGHTMENT. A contract of affreightment is the agreement made by a shipowner to carry goods in consideration of a certain payment called the freight.

When the contract is with respect to the use of the whole ship for the cargo, the terms are embodied in the CHARTER PARTY (*q.v.*), but if the contract is merely to convey certain goods, as part of the ship's cargo, the agreement is contained in the BILL OF LADING (*q.v.*).

AFTER ACQUIRED PROPERTY. (See BANKRUPT PERSON.)

AFTER HOURS. A transaction which

occurs after the bank doors have been closed for business is said to have taken place "after hours."

In country districts money may frequently be paid in after hours, and though it is not considered advisable to encourage the practice, a banker usually accommodates his customer by permitting it. If the books for the day have been closed, the customer dates the credit slip for the following day, and where cheques form part of the credit he is warned that they will not be sent forward for collection, or otherwise dealt with, until the next day. In such cases it is important that the paying-in slip be dated for the next day, otherwise the slip would be evidence that the money was paid in on the date shown on the slip. Where a customer requires the credit to be entered in his pass book when he hands over the money to the bank after hours, it should, of course, be entered as for the following day, so that the credit slip, the bank books and the pass book will all show the same date.

A banker, however, does not, as a rule, give cash for a cheque (unless it is the customer's own cheque) after hours. A drawer of a cheque has a right to stop payment of it and to give notice during business hours, and if a cheque is cashed after hours, the bank would be liable in the event of a notice to stop payment being received the following morning. The banker would also lose the protection of Section 60 of the Bills of Exchange Act, 1882 (see under PAYMENT OF BILL), as the cheque would not have been paid "in the ordinary course of business." (See BANK HOURS.)

Where a cheque was cashed five minutes after the closing hour on a market day and payment was countermanded by the drawer the next day, it was held that a banker is entitled to a reasonable margin after the advertised time of closing and the drawer's action failed. (*Baines* v. *National Provincial Bank, Ltd.* (1927), 32 Com. Cas. 216.)

AGE ADMITTED. (See LIFE POLICY.)

AGENCY. Where a bank is not represented by a branch or sub-branch it occasionally appoints a reputable party, such as a shopkeeper, to act as its agent in receiving credits and paying cheques by arrangement. Such items are remitted daily to the branch under which the agent works.

AGENDA. Literally, things to be done. The agenda are notes of various matters which are to be brought before the directors of a company, or before a meeting, for consideration. They are written upon a sheet of paper, or in the agenda books, and are used by the chairman in conducting the business of the meeting, a brief record being made opposite each entry as to how the matter is disposed of.

AGENT. An agent is a person who acts under authority from his principal, and the extent of his powers to bind his principal is limited to the terms of that authority. It is therefore necessary in dealing with an agent, in matters of any importance, to ascertain exactly what are his powers. If an agent is authorised to enter into a contract under seal, he must be appointed by deed. He may have authority to act only in some particular or special duty, as in the case of an agent empowered to purchase a house; or the authority may be of a much wider nature and constitute a person a general agent, as in the case of a manager of a branch bank, where he is authorised to take charge of the branch and conduct its business. The manager's actions will bind his principals within the scope of that business, and though there may be, as between the principals and the manager, a clear arrangement as to the limitation of the latter's authority, as regards a third party who has no knowledge of any such private arrangement, the principals will be bound by the manager's actions, even if he has disregarded that private arrangement.

When a banker employs a correspondent or agent in carrying out a transaction for a customer, the banker is responsible to his customer for any loss arising from the conduct of the agent. (*Mackersy* v. *Ramsays* (1843), 9 Cl. and Fin. 818.) The banker, however, will have a right of recourse against his correspondent, by whose default the banker has incurred the loss. (Grant's *Law of Banking*.)

Where a person's authority is unlimited, he is called a universal agent, and the principal is bound by whatever his agent does, so long as it is in accordance with the law of the land.

An agent has no power to delegate his authority to another person.

Where an agent, in exercise of his authority, affixes his name to a bill of exchange, as drawer, acceptor, or indorser, he must be careful to sign in such a manner that no personal liability will attach to him. The addition of such words as "manager," "agent," "secretary" would not be sufficient to clear him from personal liability.

In *Leadbitter* v. *Farrow* ((1816), 5 M. & S., at p. 349), Lord Ellenborough said: "Is it

not a universal rule that a man who puts his name to a bill of exchange thereby makes himself personally liable, unless he states upon the face of the bill that he subscribes it for another, or by procuration of another, which are the words of exclusion? Unless he says plainly, 'I am the mere scribe,' he is liable."

The Bills of Exchange Act, 1882, Section 26, provides as follows—

"(1) Where a person signs a bill as drawer, indorser, or acceptor, and adds words to his signature, indicating that he signs for or on behalf of a principal, or in a representative character, he is not personally liable thereon; but the mere addition to his signature of words describing him as an agent, or as filling a representative character, does not exempt him from personal liability.

"(2) In determining whether a signature on a bill is that of the principal or that of the agent by whose hand it is written, the construction most favourable to the validity of the instrument shall be adopted."

In signing for a company it is much better if an agent states definitely the capacity in which he signs, and prefixes the words "per pro." or "For and on behalf of," e.g.

per pro. T. Brown & Sons, Ltd.,
R. Jones, Secretary.

per pro. British Banking Co., Ltd.
T. Smith,
Manager.

For and on behalf of the
.....Coy., Ltd.
R. Brown, Director.
R. Jones, Secretary.

But the form of signature, "T. Brown & Sons, Ltd., R. Jones, Secretary," without a prefix is very common.

With regard to a procuration signature, Section 25 enacts—

"A signature by procuration operates as notice that the agent has but a limited authority to sign, and the principal is only bound by such signature if the agent in so signing was acting within the actual limits of his authority." "When a bill so signed in excess of authority has been honoured Section 25 does not confer a right to recover the proceeds." (*Morison* v. *London County and Westminster Bank* (1914), 30 T.L.R. 481, see under PER PRO.)

In *A. Stewart & Son of Dundee, Ltd.* v. *Westminster Bank*, [1926] *Weekly Notes*, p. 126, Rowlatt, J., said, in the course of his judgment, with reference to Section 25 (see above), that he was of opinion that the expression "by procuration" must be understood as limited to agency on behalf of a natural person and not as extending to a signature on behalf of a company which cannot sign by itself. In the Court of Appeal (*Weekly Notes*, p. 271) the Court did not express any opinion whether the provisions of Section 25 were limited to the case of agency on behalf of a natural person. In this case the bank collected cheques payable to the limited company (the cheques being indorsed "For and on behalf of" the limited company by Sir John S., the managing director, who held the whole of the ordinary capital of the company), and credited the proceeds to an account in the name of the old private firm, A. S. & Son, the business of which had been taken over by the limited company. On the death of Sir John it was found that he had used the proceeds of the cheques for his own purposes in fraud of the limited company. It was held that the bank had no defence to an action by the company for the recovery of the amount of such cheques. There was no authority for Sir John to indorse the cheques and pay them into the old firm's account (of which firm he was formerly sole partner). His actual authority could only be to indorse cheques for the benefit of the company, and at the time that he indorsed them he intended to steal the proceeds. By Section 24 the signature was wholly inoperative and the defendants acquired no rights under that signature unless it could be shown that Sir John had ostensible authority to indorse the cheques. But there was no ostensible authority. The appeal was allowed and judgment entered for the plaintiffs.

Where a signature is placed on a bill without the authority of the person whose signature it purports to be, the unauthorised signature is wholly inoperative. The supposed principal is not bound because it is not his signature; and the supposed agent is not bound on the bill because the signature pretends to be that of a principal. Apart from the bill, a person so signing would be liable for false representation of authority.

No person is liable as drawer, indorser, or acceptor of a bill who has not signed it as such, except where a person signs in a trade or assumed name, or in the name of a firm.

An agent may have authority, instead of signing per pro., to sign the actual name of

his principal, or to impress the signature with a rubber stamp. Section 91 enacts—

"(1) Where, by this Act, any instrument or writing is required to be signed by any person, it is not necessary that he should sign it with his own hand, but it is sufficient if his signature is written thereon by some other person by or under his authority.

"(2) In the case of a corporation, where, by this Act, any instrument or writing is required to be signed, it is sufficient if the instrument or writing be sealed with the corporate seal.

"But nothing in this Section shall be construed as requiring the bill or note of a corporation to be under seal."

An infant may act as an agent. An undischarged bankrupt may also act as agent.

It has been held in *Cookson* v. *Bank of England* (a case tried at the Guildhall in 1860, and approved by the Court of Common Pleas in Ireland in *Hare* v. *Copeland* (1862), 13 I.C.L.R. 426) that, where an agent indorsed a cheque "per pro Jackson & Co., A. Holmes, Agent," and he had no authority to indorse, the bank was protected.

In *Bradford* v. *Price* (1923), 39 T.L.R. 272, the following extract from *Leake on Contracts* was quoted with approval by McCardie, J., in the course of his judgment, "an agent is not justified in accepting a cheque on behalf of his principal in lieu of a payment in cash unless he has authority to do so; but if an agent authorised to receive payment in cash accepts a cheque which is met upon presentation, and before his authority to receive cash is revoked, the debtor is discharged."

An agent should not place to the credit of his own private account, cheques payable to his principal. Where the business requires this to be done, there should be a written authority from the principal. When cheques are drawn, under authority, by an agent and he pays them into his own private account, the banker is put on inquiry. See the case of *Morison* v. *London, County and Westminster Bank*, under PER PRO.

Where cheques are to be signed by an agent, an authority or mandate should be given by the principal requesting the banker to honour such cheques, and if the agent is to have power to sign when the account is overdrawn, the authority should include that power. (See MANDATE.) In the case of a limited company, a resolution should be passed by the directors as to the method in which cheques are to be signed, and a copy of the resolution, signed by the chairman, should be furnished to the banker along with specimens of the authorised signatures. (See COMPANIES.)

In entering into a contract with anyone purporting to act on behalf of a limited liability company it is essential to ascertain that the official has the requisite authority. In *Kreditbank Cassel* v. *Schenkers' Ltd.*, where bills were drawn by an official of the defendants, without authority, it was held that, in the absence of evidence that he had ostensible authority to draw bills on behalf of the company, the plaintiffs (who had discounted the bills) were not entitled to assume that he had such authority. (See the case under COMPANIES.)

On the death of the principal, any authority given to an agent to sign cheques is cancelled. The death of an agent does not prevent a banker paying a cheque signed by the agent on the account of his principal, and presented for payment after the agent's death. The authority is also determined by the bankruptcy or insanity of the principal.

The board of directors, council, or other governing body of a corporation aggregate may by resolution appoint an agent, either generally or in any particular case, to execute on behalf of the corporation any agreement or other instrument not under seal in relation to any matter within the powers of the corporation. (Law of Property Act, 1925, Section 74 (2).)

The following cases show how necessary it is that an agent should, in order to avoid all risk, sign in such a manner that there may be no question that he does so merely as an agent—

In *Chapman* v. *Smethurst*, [1909] 1 K.B. 73, an action was brought on a promissory note: "Six months after demand I promise to pay to Mrs. M. Chapman the sum of £300 for value received, together with 6 per cent interest per annum. J. H. Smethurst's Laundry and Dye Works (Limited), J. H. Smethurst, Managing Director." The words "J. H. Smethurst's Laundry and Dye Works (Limited)" and "Managing Director" were placed on the note by means of a rubber stamp. Mr. Justice Channell held that the defendant was personally liable on the promissory note, because he had not added any words to show that he signed merely as the agent of the

company. On appeal, however, it was held that the company could be sued on the note.

In *Landes* v. *Marcus & Davids* (1909), 25 T.L.R. 478, a cheque was signed by the defendants (directors of Marcus & Co., Limited), in favour of the plaintiff, in the following way: "B. Marcus, Director." "S. H. Davids, Director." The space for the secretary's signature was left blank. The name of the company was printed only at the top of the cheque. Although the directors added words to show their representative capacity, it was held that, in signing the cheques, they did not indicate that they did so on behalf of the company, and that they were personally liable on the cheque. (See the case of *Elliott* v. *Bax-Ironside* under INDORSEMENT.)

An agent cannot borrow money on behalf of his principal unless authorised to do so; and if a banker, with knowledge of the extent to which an agent may borrow, permits him to exceed his authority, the principal will not be liable. (See further under NEGOTIABLE INSTRUMENTS.)

In *Lloyd* v. *Grace, Smith, & Co.* (1912), 107 L.T. 531, where a fraud was committed by an agent for his own benefit, the House of Lords held that the principal is liable for the fraud of his agent acting within the scope of his authority. Lord Macnaghten, in the course of his judgment, said: "The only difference, in my opinion, between the case where the principal receives the benefit of the fraud, and the case where he does not, is that in the latter case the principal is liable for the wrong done to the person defrauded by his agent acting within the scope of his agency; in the former case he is liable on that ground and also on the ground that by taking the benefit he has adopted the act of his agent." (See PER PRO.)

As to corrupt transactions with agents, see PREVENTION OF CORRUPTION ACT.

AGENT DE CHANGE. A licensed broker on the Paris Exchange. (See COULISSE.)

AGIO. The difference in value between a metallic money and its nominal paper equivalent when the latter has depreciated. Also used to express the depreciation suffered by a gold coin through abrasion.

AGREEMENT. By the Stamp Act, 1891, the regulations respecting the stamp duty on agreements are as follows—

AGREEMENT OR CONTRACT, accompanied with a deposit.

See MORTGAGE, and Section 23 below, and Section 86 under MORTGAGE.

AGREEMENT for a lease or tack, or for any letting.

See LEASEHOLD, and Section 75.

AGREEMENT for sale of property.

See CONVEYANCE.

	£	s.	d.
AGREEMENT or CONTRACT made or entered into pursuant to the Highway Acts for or relating to the making, maintaining, or repairing of highways . . .	0	0	6
AGREEMENT or any MEMORANDUM of an AGREEMENT, made in England or Ireland under hand only, or made in Scotland without any clause of registration, and not otherwise specifically charged with any duty, whether the same be only evidence of a contract, or obligatory upon the parties from its being a written instrument	0	0	6

Exemptions.

(1) Agreement or memorandum the matter whereof is not of the value of £5.

(2) Agreement or memorandum for the hire of any labourer, artificer, manufacturer, or menial servant.

(3) Agreement, letter, or memorandum made for or relating to the sale of any goods, wares, or merchandise. [But by the Finance Act, 1907, Section 7, any agreement for or relating to the supply of goods on hire, whereby the goods in consideration of periodical payments will or may become the property of the person to whom they are supplied, shall be charged with stamp duty as an agreement, or, if under seal (or in Scotland with a clause of registration), as a deed, as the case requires.]

(4) Agreement or memorandum made between the master and mariners of any ship or vessel for wages on any voyage coastwise from port to

	£	s.	d.
port in the United Kingdom.			
(5) Agreement entered into between a landlord and tenant pursuant to sub-section six of Section eight or sub-section two of Section twenty of the Land Law (Ireland) Act, 1881.			

And see Sections 22 and 23, which are as follows—

"22. The duty of sixpence upon an agreement may be denoted by an adhesive stamp, which is to be cancelled by the person by whom the agreement is first executed.

"23. (1) Every instrument under hand only (not being a promissory note or bill of exchange) given upon the occasion of the deposit of any share warrant or stock certificate to bearer, or foreign or colonial share certificate, or any security for money transferable by delivery, by way of security for any loan, shall be deemed to be an agreement, and shall be charged with duty accordingly.

"(2) Every instrument under hand only (not being a promissory note or bill of exchange) making redeemable or qualifying a duly stamped transfer, intended as a security, of any registered stock or marketable security, shall be deemed to be an agreement, and shall be charged with duty accordingly.

"(3) A release or discharge of any such instrument shall not be chargeable with any *ad valorem* duty."

An agreement under hand, chargeable with a duty of sixpence, if not stamped with an adhesive postage stamp (or stamps) at the time the document is signed, may be stamped with an impressed stamp within fourteen days from its date.

If an agreement is under seal it is chargeable with *ad valorem* mortgage duty. (See MORTGAGE and Section 86 (1) (d).) Instead of executing an agreement under seal, a company may (see Section 32, Companies Act, 1948, under CONTRACTS) appoint an official to sign an agreement under hand (stamp 6d.) on its behalf. When given to a bank, the bank should be supplied with a copy of the minute authorising the arrangement.

When a company issues debentures to a bank as security, accompanied by an agreement under seal, as the debentures are stamped with *ad valorem* duty it is the practice of the stamp office to stamp the agreement with a fixed duty of 10s. provided that the date of the agreement is the same as, or is subsequent to, the date of the debentures. If the date of the agreement is prior to the date of the debentures the agreement must be stamped 5s. per cent.

AGRICULTURE ACT, 1947. An Act to provide for guaranteed prices and assured markets, and to secure good estate management and good husbandry. The Minister of Agriculture and Fisheries is empowered to acquire land by agreement or otherwise, and the Agricultural Land Commission is set up to manage such land and to advise the Minister generally in respect of agricultural land.

AGRICULTURAL BANK. (See CREDIT BANKS.)

AGRICULTURAL CREDIT SOCIETY. (See CREDIT BANKS.)

AGRICULTURAL CREDITS ACT, 1928. This Act was passed on 3rd August, 1928, and came into force on 1st October, 1928. It does not apply to Scotland or Northern Ireland.

Part I provides for the formation of an Agricultural Mortgage Corporation (which was registered at Somerset House in November, 1928), to be assisted out of public funds, for the purpose of making long-term loans on mortgages of agricultural land.

Part II deals with agricultural short-term credits, and the following are the main provisions—

A farmer may create in favour of a bank a charge, called an agricultural charge, on "the farming stock and other agricultural assets belonging to him as security for sums advanced, or to be advanced, to him, or paid or to be paid on his behalf under any guarantee by the bank and interest, commission and charges thereon."

This agricultural charge may be—

A *fixed charge* upon the farming stock and other agricultural assets belonging to the farmer at the date of the charge as may be specified in the charge (including in the case of live stock any progeny born after the date of the charge, and any agricultural plant substituted for the plant specified in the charge); or

A *floating charge* upon the farming stock and other agricultural assets from time to time belonging to the farmer; or

Both a fixed and a floating charge.

The sum secured may be either a specified amount, or a fluctuating amount advanced on current account.

For the purposes of the Act—

"Farmer" means any person who, as tenant or owner of an agricultural holding, cultivates it for profit.

"Farming stock" means crops or horticultural produce, whether growing or severed from the land, and after severance whether subjected to any treatment or process of manufacture or not; live stock, including poultry and bees, and the produce and progeny thereof; any other agricultural or horticultural produce whether subjected to any treatment or process of manufacture or not; seeds and manures; agricultural vehicles, machinery, and other plant; agricultural tenant's fixtures and other agricultural fixtures which a tenant is by law authorised to remove.

A fixed charge confers on the bank a right, upon the happening of any event specified in the charge as being an event authorising the seizure of the property, to take possession of the property and, after an interval of five clear days, to sell the property.

A fixed charge imposes on the farmer an obligation to pay to the bank the proceeds of a sale of any of the property or money received in respect of "other agricultural assets" comprised in the charge, except as the charge otherwise provides or the bank otherwise allows; also an obligation to pay to the bank any money received under any policy of insurance, or by way of compensation in respect of any of the property comprised in the charge, except as the bank otherwise allows or the charge otherwise provides.

A floating charge shall have the like effect as if the charge had been created by a debenture issued by a company. Provided that—

(*a*) The charge shall become a fixed charge upon the property comprised in the charge as existing at the date of its becoming a fixed charge—

(1) Upon a receiving order being made against the farmer;

(2) Upon the death of the farmer;

(3) Upon the dissolution of a partnership (if partnership property);

(4) Upon notice in writing to that effect being given by the bank on the happening of any event which, by virtue of the charge, confers on the bank the right to give such notice.

(*b*) The farmer, whilst the charge remains a floating charge, shall be subject to the same obligation as in the case of a fixed charge to pay to the bank the proceeds of sale, etc., received by him:

Provided that it shall not be necessary for the farmer to comply with such obligation if and so far as the amount so received is expended by him in the purchase of farming stock which on purchase becomes subject to the charge.

An agricultural charge shall not be deemed to be a bill of sale within the meaning of the Bills of Sale Acts.

An agricultural charge shall be no protection in respect of property in the charge which, but for the charge, would have been liable to distress for rent, taxes or rates.

An instrument creating an agricultural charge is exempt from stamp duty.

Every agricultural charge must be registered at the Land Registry within seven clear days after execution, otherwise it shall be void against any person other than the farmer. Such registration constitutes notice of the charge to all persons. Before taking an agricultural charge the result of an official search of the register should be obtained, to ascertain whether or no any prior charge has been registered. It is not lawful to print or publish any list of such charges or of the names of the farmers who have created them, but confidential notification, by an association representative of a particular trade to its members trading in the district in which the property subject to such charge is situate, of the creation of the charge shall not be deemed to be publication.

If, with intent to defraud, a farmer who has created an agricultural charge fails to comply with his obligations to pay to the bank sums received by him from proceeds of sale, in respect of "other agricultural assets," or under a policy of insurance or by way of compensation, or removes from his holding any property subject to the charge, he shall be liable on conviction on indictment to penal servitude for a term not exceeding three years.

"Section 12. Until the first day of January, nineteen hundred and thirty-one, the foregoing provisions of this Part of this Act shall be subject to the following modification—

"Where a bank has before the passing of this Act made advances to a farmer, whether by means of an overdraft or otherwise, an agricultural charge created in favour of the bank shall be enforceable only in respect of moneys advanced in addition to and in excess of a sum equal to the amount of

such advances outstanding at the passing of this Act."

"Section 13. Any farmer being the tenant of an agricultural holding shall have the right to create an agricultural charge notwithstanding any provision in his contract of tenancy to the contrary."

"Section 14. (1) A debenture issued by a society registered under the Industrial and Provident Societies Acts, 1893 to 1928, creating in favour of a bank a floating charge on property which is farming stock within the meaning of this Part of this Act, may be registered in like manner as an agricultural charge, and Section nine of this Act shall apply to such a charge in like manner as it applies to an agricultural charge, and the charge if so registered shall as respects such property be valid notwithstanding anything in the Bills of Sale Acts, 1878 and 1882, and shall not be deemed to be a bill of sale within the meaning of those Acts:

"Provided that, where any such charge is so registered, notice thereof signed by the secretary of the society shall be sent to the central office established under the Friendly Societies Act, 1896, and registered there.

"(2) Any such debenture may create a floating charge on any farming stock the property in which is vested in the society."

AGRICULTURAL CREDITS (SCOTLAND) ACT, 1929. Part II of this Act applies to a society registered in Scotland under the Industrial and Provident Societies Acts, and having for its principal object the provision and sale of agricultural requisites to its members or the sale of agricultural produce purchased from its members. The society may create in favour of a bank an agricultural charge as security for sums advanced to it or paid on its behalf under any guarantee by the bank. The property which may be affected by such a charge shall be the stocks of merchandise belonging to the society in pursuance of the objects which it has been formed to carry out. The sum secured may be either a specified amount or a fluctuating amount advanced on current account. Every agricultural charge shall be registered under this Act within seven clear days with the Assistant Registrar of Friendly Societies for Scotland.

For Part I of the Act see Appendix on "Scottish Banking," under AGRICULTURAL CREDITS (SCOTLAND) ACT, 1929.

AGRICULTURAL MORTGAGE CORPORATION, LIMITED. This Corporation was authorised by the Agricultural Credits Act, 1928 (*q.v.*). The purpose of the Corporation is to grant long term loans—

(1) Against mortgages of agricultural land; and

(2) in respect of major improvements to agricultural land and buildings.

Applications for loans must be made through any one of the banks which are shareholders of the Corporation.

ALLOCATUR. (Law Latin, it is allowed.) A certificate of allowance of costs, given by the taxing master at the termination of an action. When there is an order to tax costs in any proceedings, or when a judgment has been given in favour of one of the parties with costs, the allocatur must be obtained before the amount of the costs can be added to the judgment debt and an execution levied in respect of them.

ALLONGE. (Fr., *allonge*, lengthened.) An allonge is a slip of paper attached to a bill of exchange for the purpose of receiving indorsements, when the back of the bill itself has become completely covered by the indorsements of the various parties through whose hands the bill has passed. In order to prevent an allonge being removed from one bill and attached to another, it is the practice to write the first indorsement on the allonge over the junction of the two documents, so that it begins on the bill and ends on the allonge. In some countries a copy of the bill is used instead of an allonge. Section 32, s.s. 1 of the Bills of Exchange Act, 1882, provides that "an indorsement written on an allonge, or on a 'copy' of a bill issued or negotiated in a country where 'copies' are recognised, is deemed to be written on the bill itself."

An allonge does not require to be stamped, as it is merely a continuation of a bill which is already stamped. (See BILL OF EXCHANGE.)

ALLOTMENT. An applicant for shares which are being issued by a company generally fills up a printed form of application supplied by the company, in which he requests that the shares he requires may be allotted to him. At the same time he either sends a cheque to the company for the deposit which is payable on application, or pays in the amount to the company's

bankers If his application is successful he will in due course receive a letter of allotment stating the number of shares which have been allotted to him and requesting payment of the amount due per share upon allotment (See APPLICATION FOR SHARES)

An allotment of stock or bearer bonds is often payable by instalments (See INSTALMENT ALLOTMENT)

With regard to the allotment of share capital of a company the Companies Act 1948 Section 47 provides as follows—

(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 centum 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 sub section (3) thereof shall not apply to any allotment of shares subsequent to the first allotment of shares offered to the public for subscription

When a company limited by shares or a company limited by guarantee and having a share capital makes any allotment the company must within one month thereafter file with the registrar of companies a return of the allotments in accordance with Section 52 of the Act (See COMPANIES LETTER OF ALLOTMENT PROSPECTUS)

ALLOTMENT LETTER (See LETTER OF ALLOTMENT)

ALLOTMENT NOTE A note in an approved form signed by a seaman authorising the master of the ship to pay his wages to a near relative or to a savings bank Previously the amount was limited to one half of the wages and the payment did not commence till the expiration of one month from the date of the agreement with the crew the payments thereafter being at intervals of one month but by the Merchant Shipping (Seamen s Allotment) Act 1911 it is enacted that by agreement with the master an allotment note may be granted to a seaman providing for—

(*a*) payment of a greater sum than one half of the wages

(*b*) payment at a period earlier than one month from the date of the agreement with the crew and at intervals more frequent than one month

If an officer or a man who had authorised the payment of part of his wages in the above manner were to leave the ship at a foreign port having drawn all he was entitled to the allotment note would of course be void

ALLOTTEE The person to whom shares in a company are allotted in response to an application for shares

ALLOY (From the French *à loi* Latin *ad legem* according to law)

Gold and silver in the pure state are too soft to be used for coins and therefore they

are mixed with another metal, copper, called the alloy, in order to impart the requisite amount of hardness.

The light yellow colour of certain Australian sovereigns is due to the alloy being silver.

The standard fineness of gold coins is eleven-twelfths fine gold, one-twelfth alloy (copper). Silver coins contained thirty-seven-fortieths fine silver and three-fortieths alloy (copper), until the Coinage Act, 1920, when their content was changed to one-half fine silver, one-half alloy, the composition being 500 parts silver, 400 parts copper, and 100 parts nickel. The Coinage Act, 1946, replaced silver coins by cupro-nickel coins containing three-quarter copper and one-quarter nickel. Bronze coins are a mixed metal composed of copper, tin, and zinc. (See COINAGE.)

ALTERATIONS. Where alterations are necessary in any of the books of a bank, they should be made carefully, the wrong entry being neatly ruled through, and the correct one written above or below it. Errors are not to be put right merely by the fresh figures being thickly written upon the top of the old ones. Some banks require that alterations in ledgers and other important books be made in red ink. If a ledger entry has been posted into a wrong account, it is customary, when rectifying the mistake, to quote the folio of the correct account.

Bankers do not, as a rule, issue a deposit receipt, or draft, showing any alteration in an important part. Where a mistake has been made in drawing such a document, it is considered desirable to have a fresh one written, rather than to issue one to the public showing evidence of carelessness or inaccuracy.

All material alterations in a bill must be initialed or signed by all the parties liable on the bill, and all alterations in a cheque must be confirmed by the drawer. It is not sufficient, in the case of a limited company's cheque, if a material alteration is initialed only by the secretary, unless, of course, the banker has authority to accept the signature of the secretary alone.

Owing to the facility with which many initials may be forged, it is recommended that material alterations should be confirmed by full signatures and not merely by initials.

With regard to alterations in a bill of exchange, Section 64 of the Bills of Exchange Act, 1882, enacts—

"(1) Where a bill or acceptance is materially altered without the assent of all parties liable on the bill, the bill is avoided except as against a party who has himself made, authorised, or assented to the alteration, and subsequent indorsers:

"Provided that,

"Where a bill has been materially altered, but the alteration is not apparent, and the bill is in the hands of a holder in due course, such holder may avail himself of the bill as if it had not been altered, and may enforce payment of it according to its original tenor.

"(2) In particular the following alterations are material, namely, any alteration of the date, the sum payable, the time of payment, the place of payment, and, where a bill has been accepted generally, the addition of a place of payment without the acceptor's assent."

By Section 78—"A crossing authorised by this Act is a material part of the cheque; it shall not be lawful for any person to obliterate or, except as authorised by this Act, to add to or alter the crossing."

The alterations authorised by the Bills of Exchange Act, 1882, are—

Any holder may convert a blank indorsement into a special indorsement (Section 34, (4).

Where a cheque is uncrossed, the holder may cross it generally or specially (Section 77).

Where crossed generally, the holder may cross it specially (Section 77).

Where crossed generally or specially, the holder may add the words "not negotiable" (Section 77).

Where crossed specially, a banker to whom it is crossed may cross it specially to another banker for collection (Section 77).

Where an uncrossed cheque, or a cheque crossed generally, is sent to a banker for collection, he may cross it specially to himself (Section 77).

Where a bill payable at a fixed period after date is issued undated, or an acceptance of a bill payable at a fixed period after sight is undated, any holder may insert the true date (Section 12).

As to cancellation of a crossing, see OPENING A CROSSING.

A cheque which is payable to "bearer" may be altered by the payee to "order," but an alteration of a cheque from "order" to "bearer" must be initialed by all the

drawers, and of a bill by all parties liable thereon. In *Aldous* v. *Cornwell* (1868), L.R. 3 Q.B. 573, where no time of payment was stated on a bill, it was held that the words "on demand" could be inserted.

Various protections have been devised in order to prevent, or to make difficult, the fraudulent alteration of a cheque. Words such as "under one hundred pounds" or "not exceeding one hundred pounds" are often written across, or stamped upon, a cheque; or the cheque may be perforated with those words.*

The body of a cheque may also be tinted, or printed over with words or a design to show more readily if an erasure takes place, and the paper may be made with a "fugitive" surface, that is, a paper which loses its surface if any attempt is made to rub out what is written thereon. Cheque paper is also specially prepared to prevent chemicals being used to effect an alteration.

As to the various points to be observed when drawing a cheque, see DRAWING A CHEQUE.

The following case illustrates the importance of seeing that any material alteration in a cheque is initialed by all the persons by whom the cheque is drawn.

In the *Kepitigalla Rubber Estates, Limited* v. *The National Bank of India, Limited*, [1909] 2 K.B. 1010, the plaintiffs had given the defendants a written authority to honour cheques drawn by two directors and the secretary. A cheque for £150 was altered from "order" to "bearer" and initialed by the secretary, and the initials of one of the directors were forged by means of a rubber stamp. The other director signed the cheque, but did not initial the alteration. Mr. Justice Bray said: "With regard to the payment of the cheque for £150, where Mr. Lauder had not initialed the alteration from 'order' to 'bearer,' the accountants stated that it was usual for bankers to pay if two out of the three initialed the alteration. It seemed to me, however, that they would do this at their own risk; if Mr. Lauder never initialed or authorised the alteration the payment of the cheque by the bank would not be authorised."

In *Souchette, Ltd.* v. *London County Westminster & Parr's Bank, Ltd.* (1920), 36 T.L.R. 195, a cheque "Pay self or order" was signed for the Souchette Company by two directors, Frank Matthews and another. The cheque went through Mr. Matthews's account and was forwarded by the defendant bank for collection. The cheque was returned and sent back to Mr. Matthews to be put in order. When it came back for collection it was altered to read "Pay self, F. Matthews, or order." The addition of the words "F. Matthews" was in that person's writing and was not authenticated by the initials of the other signing director. Mr. Justice Greer in his judgment said that when the cheque came to the defendant bank if they thought about it at all they would have seen that it was an alteration of a cheque which was payable only to the order of the company itself, into a cheque payable to the order of F. Matthews, one of the directors who had

* The following ingenious device to prevent alterations in the amount of a cheque is printed at the left-hand side of a certain form of cheque.

Not exceeding	£10			
,, ,,	£30			
,, ,,	£130			
,, ,,	£230	220	.	.
,, ,,	£330			
,, ,,	£1,300			
,, ,,	£2,300			
,, ,,	£3,300			
,, ,,	£10,000			

No..... London, ...

To X & Y Bank, Ltd.

Pay..... .....or order

the Sum of Two hundred and Twenty Pounds

£220—— J. BROWN.

(See LIMITED CHEQUE.)

signed it, without apparently the concurrence of the other director. The defendant bank were negligent in cashing that cheque without making any inquiries to see whether or not the other bank or company were willing that the cheque should be placed to the credit of Mr. Matthews's account. (Other points in this case are referred to under COLLECTING BANKER, CONVERSION.)

In *Young* v. *Grote* (1827), 4 Bing. 253, the amount of a cheque drawn by the plaintiff had been fraudulently increased after the cheque had been signed. An arbitrator found that the plaintiff had been negligent in causing his cheque to be handed to his clerk in such a state that he could, by the mere insertion of words, make it appear to be a cheque for the larger sum. It was held by the Court of Common Pleas that the defendants, the plaintiff's bankers, were not liable for the loss sustained by the plaintiff.

In *London Joint Stock Bank, Ltd.* v. *Macmillan and Arthur*, [1918] A.C. 777, the respondents had a confidential clerk to whom was entrusted the duty of filling in cheques for signature. The clerk presented to Mr. Arthur for signature a bearer cheque for petty cash. There were no words at all in the space left for words, and in the space for figures there appeared the figures 2–0–0. The clerk having obtained Mr. Arthur's signature to the cheque in this condition, added the words "One hundred and twenty pounds" in the space left for words and the figures 1 and 0 on either side of the figure 2. [This was an appeal by the Bank to the House of Lords from an order of the Court of Appeal, [1917] 2 K.B. 439, which affirmed a judgment of Sankey, J., [1917] 1 K.B. 363, who decided that Macmillan and Arthur were not guilty of any negligence which misled the bank.]

The Lord Chancellor, in the course of his judgment, said: "The relation between banker and customer is that of debtor and creditor, with a superadded obligation on the part of the banker to honour the customer's cheques if the account is in credit. A cheque drawn by a customer is in point of law a mandate to the banker to pay the amount according to the tenor of the cheque. It is beyond dispute that the customer is bound to exercise reasonable care in drawing the cheque to prevent the banker being misled. If he draws the cheque in a manner which facilitates fraud, he is guilty of a breach of duty as between himself and the banker, and he will be responsible to the banker for any loss sustained by the banker as a natural and direct consequence of this breach of duty." "The question whether there was negligence as between banker and customer is a question of fact in each particular case, and can be decided only on a view of the cheque as issued by the drawer, with the help of any evidence available as to the course of dealings between the parties or otherwise." "If *Young* v. *Grote* is right, the judgment now appealed from is wrong. In my opinion, the decision in *Young* v. *Grote* is sound in principle and supported by a great preponderance of authority, and must be treated as good law." "In the present case, the customer neglected all precautions. He signed the cheque, leaving blank the space where the amount should have been stated in words, and, where it should have been stated in figures, there was only the figure '2' with blank spaces on either side of it. In my judgment, there was a clear breach of the duty which the customer owed to the banker." "No one can be certain of preventing forgery, but it is a very simple thing in drawing a cheque to take reasonable and ordinary precautions against forgery. If, owing to the neglect of such precautions, it is put into the power of any dishonest person to increase the amount by forgery, the customer must bear the loss as between himself and the banker. But, further, it is well settled law that if a customer signs a cheque in blank and leaves it to a clerk or other person to fill it up, he is bound by the instrument as filled up by the agent." "For all practical purposes, the cheque was in blank, as the figure '2' in its isolated position afforded no security whatever against a fraudulent increase." "For these reasons I think that judgment should be entered for the bank."

Viscount Haldane, in the course of his judgment, said: "The obligation of the customer to avoid negligence was, I think, well expressed by Kennedy, J., in *Lewes Sanitary Steam Laundry Co.* v. *Barclay* (1906), 95 L.T. 444, when that very accomplished judge defined it as including 'a duty to be careful not to facilitate any fraud which, when it has been perpetrated, is seen to have in fact flowed in natural and uninterrupted sequence from the negligent act.' The limitation of the liability to that which flows directly from the act established as negligent was obviously introduced by Kennedy, J., because of what has been repeatedly laid down in the decided cases as essential, that the negligence should be

of such a kind that the loss has resulted from it and not from some intervening cause, which, although it was able to produce its effect because of what the customer had previously done or omitted to do, was not itself brought into existence as the immediate and natural outcome of his action. Thus a man may be imprudent in leaving his cheque book and pass-book in the hands of his clerk, who is thereby enabled to forge a cheque. But he is not liable for this reason, that the direct and real cause of the loss is the intervention of an act of wickedness on the part of the clerk which the law does not call on him to anticipate in the absence of obvious ground for suspicion." Viscount Haldane held that it was immediately due to the action of the respondents, and not to any other cause, that the clerk was able to make additions to the cheque; and "I am of opinion that in putting as much as they did within his power, they took the risk of failure in the discharge of their duty to the bank of which they were customers. It follows that they cannot now recover the amount of a loss which was due to their own negligence."

In *Adelphi Bank* v. *Edwards* (1882), 26 Sol. J. 360, where the amount of a bill had been fraudulently altered by a holder, spaces having been left in drawing the bill, which enabled this to be done, Lord Justice Baggallay said: "It seems to me impossible to say that there was any duty on the part of the acceptor of the bill towards the party who might subsequently become the holder of the bill so to criticise, and so to examine the bill before he signed, as to put it out of the possibility of any additional words being afterwards inserted in it." The case was cited with approval in the case of *Scholfield* v. *Earl of Londesborough* (1896), 75 L.T. 254; A.C. 514, where it was held that the acceptor of a bill of exchange is not under a duty to take precautions against fraudulent alterations in the bill after acceptance. In referring to this case (in *London Joint Stock Bank, Ltd.* v. *Macmillan and Arthur*), the Lord Chancellor said: "The decision of the House of Lords in the Scholfield case proceeded on the ground that the duty which *Young* v. *Grote* affirmed to exist as between banker and customer had no relation to any supposed duty on the part of the acceptor of a bill of exchange to those into whose possession the bill might pass. The decision of the House of Lords does not infringe upon the authority of *Young* v. *Grote*. On the contrary, I think it recognises it."

If a customer has not been negligent in drawing a cheque and the amount has been fraudulently increased, the loss will fall upon the banker who has paid the cheque.

Where a solicitor prepared a cheque for the signatures of trustees, making it payable to "John Prust & Co.," and after receiving the cheque duly signed, added to the payee's name "per Cumberbirch & Potts," it was held that this unauthorised addition was a material alteration voiding the cheque. The signing of the cheque by the trustees with a space after the payee's name was not negligence and the drawee bank was liable. (*Slingsby and Others* v. *District Bank, Ltd.*, [1932] 1 K.B. 544.)

Material alterations in a deed should be initialed by the parties signing the deed, and they should be specifically referred to in the attestation clause.

(See also MATERIAL ALTERATION.)

ALTERNATE DIRECTORS. If the articles of association of a company permit, a director can nominate an alternate or substitute director, who can act when his principal is absent, but his acts done within the scope of his authority are binding on the company. Unless provided by the articles, an alternate director cannot look to the company for his fees, which are the responsibility of his principal.

Particulars of alternate directors must be included in the annual return to Bush House.

ALTERNATIVE DRAWEE. An order addressed to two drawees in the alternative, or to two or more drawees in succession, is not a bill of exchange. (See DRAWEE.)

ALTERNATIVE PAYEE. A bill of exchange may be made payable in the alternative to one of two, or one or some of several payees. (See PAYEE.)

AMALGAMATIONS. (See BANK AMALGAMATIONS.)

See provisions of the Companies Act, 1948 (Section 209), regarding amalgamations under ARRANGEMENT WITH CREDITORS.

AMERICAN SHARE CERTIFICATES. One type of these certificates partakes of the nature of a registered holding and also of a bearer security. On the face is given the name of the registered holder of the shares and on the back is supplied a blank form of transfer, which, when signed by the registered holder, makes the certificate transferable by delivery like a bearer bond. The registered holder, however, is the person to whom the company sends the dividends, and the owner of the certificate (unless he gets registered himself) must apply to him

for the dividend, producing the certificate to show that he is entitled to it. If, as is often the case, the registered holder is a well-known London firm, the application for the dividend may be easily made, but if the registered holder is not well known there may be considerable trouble in finding him. In some cases a commission is charged by the registered holder for receiving and paying over the dividend to the owner of the certificate. A note of the payment of each dividend is stamped on the back of the certificate. (See MARKING NAMES.)

These certificates differ from a bearer bond, in that a bearer bond is a "negotiable instrument," which a certificate of this description is not, and therefore they do not give to the owner any better title than the previous owner had. In practice, however, they pass from one person to another by mere delivery.

Trouble may arise to the unregistered owner owing to the death of the registered private holder, or to the company requiring verification of the transferor's signature on the form of transfer. It is also possible for a charge to be registered on the company's books against the shares. To avoid trouble, a purchaser should have the shares registered in his own name. Owing to the fact that "American" shares in the names of limited liability companies, corporations, societies, or institutions constitute bad delivery, the Stock Exchange Committee made a rule in January, 1931, as follows—

"The Committee for General Purposes have ruled that 'American' shares in the names of limited liability companies, corporations, societies, or institutions will be a bad delivery after Friday, 6th March, unless each certificate is stamped with the signed guarantee of the limited liability company, corporation, society, or institution in whose name the shares are registered, to the effect that all necessary papers have been filed with the registrar and/or transfer agent to ensure transfer."

This rule makes the companies or corporations responsible for delivering to a buyer shares which will be accepted as good delivery in New York and/or Montreal.

When the certificates are lodged as security the bank's usual memorandum of deposit should be signed by the customer.

When such certificates are purchased or taken as security, they should be indorsed by the registered holder, otherwise, in the event of his death, there would be considerable delay and expense in sending proof of death to America.

If the indorsement on a certificate should prove to be a forgery, the banker holding it would not have any title to the shares. It is therefore necessary, when taking such certificates, to inquire as to the genuineness of the indorsements, particularly when the name of the registered holder is not a well-known one. Brokers often guarantee the indorsements of private persons when the shares are sold.

The stamp duty on the certificates when negotiated in this country is threepence for each £25.

The following is the wording on a certificate of this nature—

"This certifies that John Brown is the owner of ten paid shares of the Capital Stock of the Company of one hundred dollars each, transferable only on the books of the company in person or by Attorney, and upon the surrender of this certificate.

"This certificate shall not become valid until countersigned by the transfer agent and also by the registrar of transfers."

On the back there appears the following:

"For value received have bargained, sold, assigned, and transferred, and by these presents do bargain, sell, assign, and transfer unto shares of the Capital Stock of the Company mentioned in the within certificate, and do hereby constitute and appoint true and lawful Attorney, irrevocable, for and in name and stead, but to use to sell, assign, transfer, and set over all or any part of the said Stock, and for that purpose to make and execute all necessary acts of assignment and transfer, and one or more persons to substitute with like full power.

"Dated 19

"JOHN BROWN.

"Signed and acknowledged
in presence of

"The witness must state his address and occupation. The Company reserves the right of requiring further identification of the transferor's signature.

"*Notice.*—The signature to this assignment must correspond with the name as written upon the face of the certificate, in every particular, without alteration or enlargement, or any change whatever." (See CERTIFICATE OF SUBSCRIPTION, STOCK TRUST CERTIFICATE.)

AMORTISATION OR AMORTISEMENT. The redemption of loans or bonds by annual payments from a sinking fund. The sinking

fund is built up for the purpose of redeeming annually such an amount of bonds as are due to be paid off, along with the interest on outstanding bonds.

An amortisation table is printed on certain bonds which are repayable in this manner, showing what amount is redeemable each year.

AMOUNT OF BILL OR CHEQUE. The amount must be "a sum certain in money." The amount is usually in words, in the body of a cheque, and, at the bottom left-hand corner, in figures. In bills the figures are usually at the top left-hand corner. If the amount includes a halfpenny, the halfpenny is disregarded.

The Bills of Exchange Act, 1882, does not specifically say that the amount must be stated in words, and it would therefore appear that a banker could not legally refuse payment of a cheque where the sum was expressed in figures only, instead of in words and figures. It is the practice, however, to return a cheque for completion when the amount is not in words. If the amount is in words only, it is customary to pay the cheque.

In drawing cheques, drafts, etc., the words of the amount should be written closely together, so as to prevent any possibility of an alteration, and the figures should be commenced close to the £, the space between the pounds and the shillings being filled with a line. Plain, large and heavy figures help to prevent fraudulent alterations.

If a cheque is drawn as "Ten six shillings and eight pence," and the amount in figures clearly £10 6s. 8d., it is not usual to return the cheque merely because the word "pounds" has been omitted, if it is apparently only a clerical error.

With regard to the sum payable by a bill of exchange, see Section 9, Bills of Exchange Act, 1882, and the case of *Cohn* v. *Boulken* (under BILL OF EXCHANGE) where the practice of bankers is referred to with respect to cheques drawn in England on an English bank in French currency.

Where a bill in foreign currency is drawn out of but payable in the United Kingdom, see Section 72 (4), under FOREIGN BILL. (See ALTERATIONS, "AMOUNTS DIFFER.")

"AMOUNTS DIFFER." If the amount in words on a cheque or bill differs from the amount in figures, the cheque or bill is usually returned unpaid by the banker, with the answer "amounts differ," or some similar words. Some bankers, however, pay the less amount.

In practice a banker rarely pays the amount in words if it is the larger amount, although by the Bills of Exchange Act, 1882, Section 9 (2), "where the sum payable is expressed in words and also in figures, and there is a discrepancy between the two, the sum denoted by the words is the amount payable." Most persons in dealing with cheques and bills look only at the figures and not at the words. Were a drawee to accept a bill on which the amount in figures is stated as £50, and he took that as the amount of the bill when accepting it, not noticing that the words stated the amount as "Five hundred pounds," no banker would be inclined to pay the amount in words, unless authorised by the acceptor to do so.

"AND REDUCED." Where the share capital of a company has been reduced, the court may, if it thinks proper so to do, direct that the words "and reduced" be added to the name of the company, after the word "limited," until such date as the court may fix. The object of the words is to give notice to anyone who may be giving credit to the company on the strength of the capital stated in the memorandum of association. (See REDUCTION OF SHARE CAPITAL.)

ANNUAL GENERAL MEETING. A general meeting of every company shall be held once at the least in every calendar year, and not more than fifteen months after the last preceding general meeting. (See Section 131 of the Companies Act, 1948, under heading MEETINGS.)

The usual business at the annual meeting of shareholders is: reading the notice convening the meeting, reading the auditor's report, adopting the directors' report and balance sheet, sanctioning a dividend, electing directors in place of those retiring by rotation, and appointing the auditors.

ANNUAL RETURN. By Section 21 of the Bank Charter Act, every banker in England and Wales must, on the 1st day of January in each year, or within fifteen days thereafter, make a return to the Commissioners of Stamps and Taxes (now Inland Revenue) of his name, residence, and occupation, or, in the case of a company or partnership, of the name, residence, and occupation of every member and also the name of the firm under which such banker or company carries on business. If a banker or company omits or refuses to make such return within the fifteen days mentioned, or shall wilfully make other than a true return, every one so offending shall forfeit the sum of £50.

By the same Section the Commissioners had to publish a copy of the return in certain newspapers, but, by Section 57 of 43 & 44 Vict. c. 20, it shall not be obligatory on the Commissioners to publish in any newspaper any return made to them by any banking company, which is duly registered under the provisions of 6 Geo. IV, c. 42, 7 Geo. IV, c. 46, 7 Geo. IV, c. 67, and the Companies Acts or any of them.

The above return is not required from banking companies registered under the Companies Acts, but in place of it an annual return must be sent to the registrar of companies.

The provisions of the Companies Act, 1948, with regard to the annual return are—

Every company having a share capital shall once at least in every year send to the registrar of companies a return (called the "Annual Return") of all persons, who, on the fourteenth day after the first ordinary general meeting in the year, are members of the company, and of all persons who have ceased to be members since the date of the last return. The return must state the names, addresses, and occupations of all the past and present members therein mentioned, and the number of shares held by each of the existing members at the date of the return, specifying shares transferred since the date of the last return and the dates of registration of the transfers, and must contain a summary specifying various particulars regarding the shares. A banking company must add to the return a statement of the several places where it carries on business.

The return must be completed within fourteen days after the fourteenth day, above mentioned, and forwarded forthwith to the registrar.

The return for the registrar must be written upon special forms for the purpose, and be impressed with a five-shilling fee stamp. (See COMPANIES.)

ANNUITANT. A person who is in the receipt of an annuity.

ANNUITY. (From Latin *annus*, a year.) A sum of money paid yearly, or it may be by quarterly or half-yearly payments. A life annuity is payable only during a person's life-time; a perpetual annuity is payable in perpetuity. A deferred annuity is one which does not take effect till after a certain period, whereas an immediate annuity begins at once. A terminable annuity ceases at a certain fixed time, or at death. (See TERMINABLE ANNUITY.)

An annuity may be created by will, or during the life-time of the donor. Annuities may be purchased from the Government or an insurance office. A person who has no one dependent upon him sometimes sinks his capital in the purchase of an annuity, which will produce a better income than if he lent or invested the money. An annual payment received from land is a rent, not an annuity.

Consols are really perpetual annuities, though it is customary to refer to Consols as stock, and to the half-yearly payments as dividends.

Where annuities are paid direct to a bank for credit of the annuitant's account, insurance companies often require a certificate from the bank, or some responsible person, that the annuitant is still alive.

The following is a form of an insurance company's annuity receipt—

INSURANCE COMPANY.

Annuity Receipt No. Deposit £
Annuity £
Received from this day of 19 the sum of pounds, being the purchase money for an annuity of on the life of himself.

} Directors.
, Secretary.

By the Stamp Act, 1891—

ANNUITY, conveyance in consideration of. (See CONVEYANCE, and Section 56 in the Act.)

Purchase of. (See CONVEYANCE, and Section 60 in the Act.)

Creation of, by way of security. (See MORTGAGE, etc., and Section 87.)

Instruments relating to, upon any other occasion. (See BOND, COVENANT, etc.)

ANSWERS. When a bill or cheque, for any reason, is returned unpaid, the answer given by the banker, as the reason of its return, must not be at variance with the actual fact. The answer is usually written upon the bill or cheque. There is no legal obligation to give a written answer on an unpaid cheque, but if presented under Clearing House Rules, it must bear a written reason for non-payment. There is a danger in not putting a written answer on a cheque presented over the counter, for a subsequent holder would not know of its dishonour. A banker might be held liable in damages if he returned a cheque marked "Refer to drawer" when the correct answer should have been "Postdated," or "Figures and words differ," or some similar answer.

It should be noted that a careless use of

an abbreviated answer may render a banker liable. In an action on a returned bill which had been marked "N.A.," it was suggested that those letters meant "No assets" or "No account," as well as "No advice," which was the answer the banker intended to give.

The Committee of the Bankers' Clearing House, having observed that answers on unpaid cheques and bills are frequently indicated by initials which in some cases would convey little meaning to a bank's customer and are not always intelligible to the collecting bank, resolved that from 15th October, 1928, the general rule with regard to answers on returns be altered to read as follows—

"No return can be received without an answer in writing on the return why payment is refused, such answer in every case to be written in words without abbreviation and not indicated by initials."

A banker is sometimes able to get a technical mistake in a cheque corrected by the drawer, and where this can be conveniently done it is much better than returning the cheque.

Where there are not sufficient funds to meet a cheque, and there is also a technical irregularity in it, when returning the cheque, the answer given often refers only to the irregularity and not to the want of funds, particularly if it is expected that by the time the irregularity has been put right the banker will be in a position to pay it.

The words "Will pay on banker's confirmation" are occasionally added to an answer, when the sole reason for the return of the cheque is a technical one, such as "Indorsement irregular." If the drawer dies before the cheque arrives back, or the account changes so as not to admit of the cheque being debited, the banker is not liable, by reason of the words used, to pay the cheque. The words have reference only to the technical irregularity and not to the payment of the amount.

With regard to the answer to be given when a wire is received asking if a certain cheque will be paid, see "ADVISE FATE."

The following are some of the "answers" which are given on cheques and bills (the answer being generally written in ink on the left-hand top corner)—

"Acceptor bankrupt."

"Acceptor dead." (See DEATH OF ACCEPTOR.)

"Account attached." (See GARNISHEE ORDER.)

"Account closed" (more often "No account").

"Alteration in . . . requires drawer's confirmation"

"Amounts differ" (*q.v.*).

"Crossed to two bankers" (*q.v.*).

"Date incomplete."

"Drawer bankrupt."

"Drawer dead." (See DEATH OF DRAWER.)

"Effects not cleared" (*q.v.*).

"Incompletely signed" (or "Further signature required").

"Indorsement irregular."

"Indorsement required."

"Indorsement requires confirmation."

"Insufficient funds."

"Insufficiently stamped."

"Irregularly drawn."

"Mutilated cheque" (*q.v.*).

"No account" (*q.v.*).

"No advice" (*q.v.*).

"No effects."

"No orders" (*q.v.*).

'Not provided for" (*q.v.*).

"Not Saturdays" (*q.v.*).

"Not sufficient" (*q.v.*) (also written "Not sufficient funds").

"Orders not to pay."

"Out of date." (See STALE CHEQUE.)

"Postdated" (*q.v.*).

"Present again" (*q.v.*). An insufficient answer in itself.

"Refer to acceptor."

"Refer to drawer."

"Re-present." (See PRESENT AGAIN.)

"Requires banker's crossing" (*q.v.*).

"Requires stamp of banker to whom crossed."

"Signature differs" (i.e. differs from the customer's usual hand or method of signing).

"Stale." (See STALE CHEQUE.)

"Words and figures differ." (See "AMOUNTS DIFFER.")

ANTE-DATED. Ante-dating is placing a date on a document prior to that on which it is actually signed. "To ante-date a bill in order to defraud may amount to a forgery." (Chalmers.)

A bill of exchange is not invalid by reason only that it is ante-dated (Section 13 (2), Bills of Exchange Act, 1882). The date of the stamp upon an ante-dated bill may therefore be subsequent to the date of the bill, and give the bill the appearance of not being in accordance with the Stamp Act, 1891, Section 37 (2):—"No bill of exchange shall be stamped with an impressed stamp after the execution thereof." (See DATE.)

APPLICATION FOR SHARES. A form of application for shares usually accompanies a prospectus offering to the public for subscription or purchase shares in a company.

When the form is filled up by an applicant, it is dispatched, along with the sum payable on application, to the company or the company's bankers. If the application is successful, a letter of allotment (see LETTER OF ALLOTMENT) is sent to the applicant in due course.

The following is the standard application form as recommended by the Council of the Institute of Bankers—

Application for shares with receipt form attached. Size 13 in by 8¼ in., the receipt being exactly a quarter of the whole form.

IMPERIAL TRUST, LIMITED.

Share Capital - - - £
Divided into Shares of £ each.

Issue of Shares of

No.....

FORM OF APPLICATION

To the Directors of the

IMPERIAL TRUST, LIMITED.

Gentlemen,

Having paid to your Bankers the sum of £ being a deposit of per Share on Application for Shares of £ each in the above-named Company, I/we hereby request that you will allot to me/us that number of Shares, and I/we hereby agree to accept the same or any less number that you may allot to me/us upon the terms and conditions of the Prospectus (dated) and Memorandum and Articles of Association of the Company, and I/we authorise you to place my/our name(s) on the Register of Members in respect of the Shares allotted to me/us.

To be written distinctly. { *Name (in full)*..... *Address (in full)*..... ..... *Profession or Business*.....

A lady should state whether she is a Spinster, Wife or Widow.

(*Date*).....19... (*Signature*).....

This Form, when duly filled up as directed above, should be sent entire, with the necessary remittance, to the Company's Bankers, the Bank of London Limited, 83, Lombard Street, London, E.C.

Cheques should be made payable to

BEARER and crossed *Not Negotiable.*

If altered from "Order" to "Bearer" the alteration *should be signed by the Drawer.*

The Applicant is particularly requested to write clearly, *within the bordered space* below, his or her name and the *full* address to which the receipt should be sent. For Joint Accounts the first name should be written within, and the other or others below the bordered space.

IMPERIAL TRUST, LIMITED

Application Receipt.

Name of first or of Sole Applicant. .....

Address { .... }

Joint Applicants (if any) Names only. { .... }

RECEIVED for account of the Imperial Trust, Limited, from the person(s) whose name(s) is/are written in the margin, the undermentioned amount, being a deposit of per share on Application for Shares in the above-mentioned Company.

For BANK OF LONDON LIMITED.

..... *Cashier*

£ .....19...

This Receipt, when returned by the Bankers, must be preserved by the Applicant to be exchanged in due course for the relative Share Certificate.

(See STANDARD FORMS.)

APPLICATION FORMS. A general term signifying any form which is filled up and signed by a customer when making an application to a banker, e.g. an application form for a deposit receipt or for a banker's draft.

APPLICATION MONEY. The sum sent to a company on application for shares. (See APPLICATION FOR SHARES.)

APPOINTMENT. By the Stamp Act, 1891, the duty is—

	£	s.	d.
APPOINTMENT of a new trustee, and APPOINTMENT in execution of a power of any property, or of any use, share, or interest in any property, by any instrument not being a will	0	10	0

And see Section 62, under heading CONVEYANCE.

APPRAISER. A person who appraises or values property, real or personal, for a fee.

The licence of an appraiser costs £2 per annum.

APPROPRIATED STAMPS. Section 10 of the Stamp Act, 1891, enacts—

"(1) A stamp which by any word or words on the face of it is appropriated to any particular description of instrument is not to be used, or, if used, is not to be available, for an instrument of any other description.

"(2) An instrument falling under the particular description to which any stamp is so appropriated as aforesaid is not to be deemed duly stamped, unless it is stamped with the stamp so appropriated."

Appropriated stamps are used for—

Bankruptcy, proof of debt.

Brokers' contract notes.

The stamp in each case is adhesive.

Foreign bills—that is, bills and promissory notes drawn or made out of the United Kingdom, except such bills as are payable on demand, at sight, or on presentation, or at not exceeding three days after date or sight, for which a postage stamp is the proper one to be used. On cheques drawn abroad, the ordinary impressed stamp is sufficient. (See under BILL OF EXCHANGE.) Foreign bill stamps are adhesive.

Inland bills and promissory notes drawn or made in the United Kingdom (except such bills as are payable on demand, at sight, or on presentation, or at not exceeding three days after date or sight, when a twopenny postage or impressed stamp may be used), and the appropriated stamps must be impressed. It is the practice of the Inland Revenue Department to regard the appropriated bill or note stamps as applicable only to bills or notes chargeable with *ad valorem* duty.

APPROPRIATION ACCOUNT. An account which shows how net profits are appropriated. On the one side appears the total sum available for division, and on the other side the manner in which that sum is appropriated, for payment of dividend, transfers to reserve fund, etc.

APPROPRIATION ACT. An Act passed annually, at the end of the session, to give statutory authority to the various payments out of the public money—the Consolidation Fund—as authorised during the session. The Schedules to the Act show how the sums granted are appropriated.

APPROPRIATION OF GOODS. Upon a sale of unascertained or future goods is an act identifying goods specifically with the contract.

APPROPRIATION OF PAYMENTS. If a customer pays in money for a particular purpose, the banker must apply it accordingly. For example, if an amount is paid in to meet a specified cheque or bill, it must be used for that purpose, but if the amount is paid in without any particular instructions being given, the banker may appropriate the money in reduction of the customer's indebtedness. Where there is no special appropriation then, according to the rule in *Clayton's* case, an amount paid to credit is held to be a payment of the earliest unpaid debit in the account, and it is the sum first paid in that is first drawn out. (See CLAYTON'S CASE.)

APPURTENANCES. Things or rights which appertain or belong to a property and which pass along with the property.

ARBITRAGE. The purchase of foreign exchange bullion or securities in one centre for sale forthwith in another centre where higher prices are ruling. In other words, the taking advantage of the difference in prices between two markets. (See also ARBITRATION OF EXCHANGE.)

ARBITRATION. A matter which is in dispute is often settled by means of arbitration—that is, the case is referred by the disputing parties to one or more persons, the arbitrators, who act as arbiters or judges, and upon whose decision the disputants agree to abide. The written decision of an arbitrator is called the award.

ARBITRATION OF EXCHANGE. (Frequently called ARBITRAGE.) The operation by which a merchant pays a debt in one country by means of a bill payable in another. The price of bills payable in different centres is taken into account, and if it is found that it is cheaper to settle a debt in, say, Paris, by means of a bill upon, say, Amsterdam or Berlin, than by a bill upon Paris, the merchant takes advantage of that fact and makes payment accordingly.

Simple arbitration is where only one intermediate place is included in the transaction; where there are several places it is called compound arbitration.

Similar operations are conducted by bankers in order to make exchange profits.

ARRANGEMENT WITH CREDITORS.

ARRANGEMENT WITH MEMBERS. Where a person is unable to pay his debts he may (apart altogether from the Bankruptcy Acts) endeavour to make an arrangement with his creditors with respect to the money

he owes to them. A debtor usually offers—

(1) To pay the creditors so much in the pound in full satisfaction of his debts to them (see COMPOSITION WITH CREDITORS); or

(2) To transfer his property to a trustee to be realised and the proceeds divided amongst the creditors. (See ASSIGNMENT FOR BENEFIT OF CREDITORS.)

If such an arrangement is made by deed or agreement, the deed of arrangement must be registered within seven days. (See DEED OF ARRANGEMENT.)

In the case of a proposed arrangement between a company and its creditors, or between the company and its members, the Companies Act, 1948, Section 206, enacts—

"(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."

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 by the consolidation of shares of different classes or by the division of shares into shares of different classes or by both those methods (s.s. (6).) An order under sub-section (2) shall have no effect until an office copy of the order has been delivered to the registrar of companies, 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 (s.s. (3)).

The Companies Act, 1948, makes provisions for facilitating reconstruction and amalgamation of companies. Where application is made to the Court for sanction of a compromise or arrangement under Section 206 and the Court is satisfied that the scheme is for reconstruction or amalgamation, the Court may, either by an order sanctioning the compromise or arrangement, or by any subsequent order, make provision, amongst other things, for the transfer of the property and liabilities from the one company to the other company, the allotment and appropriation of shares and other interests, and the dissolution, without winding-up, of the transferor company. (Section 208.) (See WINDING UP—WINDING UP VOLUNTARILY.)

ARREARS CERTIFICATE. Where the half-year's interest on a debenture is not paid, or part only is paid, an arrears certificate may be issued for the unpaid interest, stating that it will be payable out of the surplus profits for any subsequent half-year. (See DEFERRED INTEREST CERTIFICATE.)

ARRESTMENT. A term in Scottish Law. (See Appendix on "Scottish Banking" under ARRESTMENT.) The equivalent in England is attachment (*q.v.*).

ARTICLES OF ASSOCIATION. The articles of association are the regulations or by-laws of a joint stock company by which its affairs are governed.

The memorandum forms the boundary to the company's powers, but within that boundary the company can make its own rules and regulations, and these are contained in the articles of association. The articles "accept the memorandum of association as the charter of incorporation of the company, and so accepting it the articles proceed to define the duties, the rights and the powers of the governing body as between themselves and the company at large, and the mode and form in which the business of the company is to be carried on, and the mode and form in which changes in the internal regulations of the company may from time to time be made." (*Ashbury Railway Carriage Co.* v. *Riche* (1875), L.R. 7 H.L. 653.)

Before dealing with a company a banker should be careful to make himself acquainted with the memorandum and articles of association of the company, and particularly as to the powers of the directors to borrow and to mortgage the company's property.

Every person dealing with a company is deemed to have notice of the contents of the memorandum and articles.

The following are the provisions contained in the Companies Act, 1948—

"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.

"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."

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—

(1) Be printed.

(2) Be divided into paragraphs numbered consecutively.

(3) Bear the same stamp as if they were contained in a deed.

(4) 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."

Table A, referred to in the above sections, contains regulations which may be adopted for a company's articles of association, but in many companies special articles are prepared. Articles of association deal with the following matters: share capital, lien on shares, calls on shares, transfer and transmission of shares, forfeiture of shares, conversion of shares into stock, alteration of capital, general meetings, proceedings at general meeting, votes of members, directors, powers and duties of directors, the seal, disqualifications of directors, rotation of directors, proceedings of directors, dividends and reserve, accounts, audit, notices.

The following sections set forth the general provisions of the Act with respect to the 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."

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."

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 an enrolled law agent, engaged in the formation of the company, or by a person named in the articles as a director or secretary of the company, of compliance with all or any of the said requirements shall be produced to the registrar, and the registrar may accept such a declaration as sufficient evidence of compliance."

A company shall send to any member, at his request, a copy of the memorandum and articles, if any, on payment of one shilling or such less sum as the company may prescribe. (Section 24.)

Where articles have been registered, a copy of every special resolution for the time being in force shall be embodied in or annexed to every copy of the articles issued after the passing of the resolution. (See RESOLUTIONS.) (See also COMPANIES, MEMORANDUM OF ASSOCIATION, TABLE A.)

"AS PER ADVICE." These words, when found upon a bill of exchange, imply that the drawer has drawn the bill in accordance with a letter of advice.

ASSENT TO DEVISE. (See PERSONAL REPRESENTATIVES.)

ASSESSMENT OF INCOME TAX. The income of a person liable to pay income tax is assessed by the Inspector of Taxes who determines the amount of tax which is payable. (See INCOME TAX.) The word "Assessment" is used for the official value of a property or income for taxation purposes, and also for the amount of the tax an individual has to pay.

ASSETS. The goods, property, and resources of all kinds, of a company or an individual, which are available for the payment of the debts or liabilities. A banker's assets are his cash in hand or with his London agents or at the Bank of England, money at call and short notice, investments in Government and other securities, bills, advances to customers, premises, etc. (See BALANCE SHEET.)

ASSIGNATION. (See Appendix on "Scottish Banking" under ASSIGNATION.)

ASSIGNEE. The person to whom a property or a right is assigned.

ASSIGNMENT. To assign a right or a property is to transfer it, or make it over, to another person.

As to the difference between "assignability" and "negotiability," see NEGOTIABLE INSTRUMENTS.

As to the stamp duty on an assignment by way of security, see MORTGAGE; and upon a sale or otherwise, see CONVEYANCE.

As to an assignment of a life policy, see LIFE POLICY.

(See DEBTS, ASSIGNMENT OF.)

ASSIGNMENT FOR BENEFIT OF CREDITORS. A person who is unable to pay his debts may legally call his creditors together and offer to transfer his property to a trustee, in order that it may be realised and the proceeds apportioned amongst the creditors, according to the amount of their claims, in full discharge of what he is owing to them.

The deed assigning the property to the trustee must be registered within seven days, otherwise it is void. (See DEED OF ARRANGEMENT.)

An assignment of the debtor's property for the benefit of his creditors, is an arrangement quite apart from proceedings under the Bankruptcy Acts.

Where a debtor assigns his property to a

trustee for the benefit of his creditors it is an act of bankruptcy (see ACT OF BANKRUPTCY) and a debtor may be adjudged a bankrupt upon a bankruptcy petition presented within three months from the date of an act of bankruptcy (see RECEIVING ORDER) When such a petition is presented and the debtor is made bankrupt the deed of assignment becomes void (See BANKRUPTCY COMPOSITION WITH CREDITORS)

A banker is protected by Section 46 of the Bankruptcy Act 1914 in paying over to a trustee under a deed of assignment any balance there may be in the debtor s account (See under ACT OF BANKRUPTCY)

An account opened by a trustee under a deed of assignment should be in the name of the debtor s estate Unless all the creditors have assented to the deed withdrawals should only be permitted to meet expenses properly incurred by the trustee in performing his duties for if bankruptcy ensue within three months on the petition of any dissentient creditors (or within one month if notice has been given to them under Section 24 Deeds of Arrangement Act 1914 quoted under ACTS OF BANKRUPTCY) the trustee in bankruptcy can claim all moneys paid into such account (See DEED OF ARRANGEMENT)

ASSIGNMENT OF DEBTS (See DEBTS ASSIGNMENT OF)

ASSIGNMENT OF LIFE POLICY (See LIFE POLICY)

ASSIGNOR The person by whom a property or a right is assigned

ASSOCIATION OF ENGLISH COUNTRY BANKERS The Association was formed in 1874 to keep a watch over all matters arising in Parliament or elsewhere affecting directly or indirectly the interests of the English country banks or any section thereof It ceased to exist in December 1919 on the formation of the British Bankers Association (See BRITISH BANKERS ASSOCIATION)

ASSOCIATIONS (See SOCIETIES)

ASSUMED NAME Where a person trades in an assumed name and signs cheques and bills in that name it is customary for a banker to receive a written authority from him to honour cheques or bills when signed in the trade name The authority is signed by the person in his real name and a specimen signature of the assumed name is given

The Bills of Exchange Act 1882 permits a bill to be signed in an assumed name By Section 23—

(1) Where a person signs a bill in a trade or assumed name he is liable thereon as if he had signed it in his own name

A purchaser of a business often assumes for a time at any rate the name of the person who built up the connection

Every individual carrying on a business under a business name which does not consist of his true surname must be registered under the Registration of Business Names Act 1916 (See REGISTRATION OF BUSINESS NAMES)

ASSURANCE Originally the word assurance appears to have been applied only to life assurance and the word insurance to fire insurance but either word is now commonly used without regard to its original meaning (See FIDELITY GUARANTEE FIRE INSURANCE LIFE POLICY MARINE INSURANCE POLICY POLICY OF INSURANCE SINKING FUND ASSURANCE SPECIF—TRANSMISSION OF)

ATTACHMENT Where a person has obtained a judgment for the recovery of money he may by application to the Court obtain a garnishee order which when served upon a banker will attach any money in the banker s hands belonging to the person against whom judgment was given (See GARNISHEE ORDER)

ATTESTATION A formal witnessing of a signature

In the case of a will the testator s signature must be made or acknowledged by the testator in the presence of two or more witnesses present at the same time each of whom must attest or witness the will There is no special form of attestation necessary but the following is a common attestation clause—

Signed by the said the testator in the presence of us both present at the same time who in his presence and at his request and in the presence of each other have hereunto set our names as witnesses

A B
C D

The witnesses give their names addresses and descriptions A legacy to a witness or to the wife of a witness is void

Where a signature is witnessed as in the case of a transfer of shares the form is usually—

Signed sealed and delivered by the above named in the presence of

Signature
Address
Occupation

When a document is executed by a person

acting under a power of attorney, the form is—

"Signed, sealed, and delivered by the above-named John Brown by his attorney John Jones in the presence of," etc.

A transferee should not witness a transferor's signature. A minor is not a suitable witness. There is no legal objection to a wife witnessing her husband's signature, or a husband that of his wife, but many railway and other companies will not accept such witnesses.

A transfer of shares to the nominees of a bank should not be witnessed by one of the nominees. It should, however, be witnessed by some other bank official. (See FORGED TRANSFER.)

When a wife gives a security for her husband's account her signature to the document of charge should be witnessed by her own solicitor. (See the remarks regarding undue influence under GUARANTEE and the article UNDUE INFLUENCE.)

When a transfer is executed out of Great Britain the signature should be attested by H.M. Consul or Vice-Consul, a clergyman, magistrate, notary public, or other person holding a public appointment. When a witness is a female, she must state whether she is a spinster, wife or widow; and if a wife she should give her husband's name, address, and occupation.

As to the instructions of the Bank of England for attesting the signatures on a demand for registration of stock as stock transferable by deed, see under NATIONAL DEBT.

Where any material alterations or interlineations have been made in a deed, they should be referred to in the attestation clause as having been made before execution of the document.

In a document under hand, a witness often signs simply as:—"Witness, John Brown," and gives his address and description.

In Scotland, as for example where a customer signs a banker's printed memorandum of deposit, known in Scotland as a Letter of Pledge, a clause, called the "testing clause," in the following form is included before he signs—

"In witness whereof these presents are subscribed by me the said at upon the day of one thousand nine hundred and before these witnesses of [*description*] and of *etc.*

"*Witness.*

signatures of witnesses. "*Witness.*"

The testing clause in a Scotch deed usually states the number of pages on which it is written, and mentions any important alterations or erasures which have been made in the document.

Where a signature by "mark" is witnessed, the form is—

his
John × Brown.
mark

Witness,
John Jones,
Warwick Road,
Carlisle, Builder.

In banks it is customary for two persons to witness a "mark."

In the case of a deed which is executed by a "mark," the words used are to the following effect—

"Signed, sealed, and delivered by the above-named John Brown, he having signed by a mark in consequence of being unable to sign his name, in the presence of us, the deed having first been read over and explained to him when he appeared perfectly to understand the same."

Several signatures on a document may be witnessed by the same person.

(See also Appendix on "Scottish Banking" under DEEDS—EXECUTION OF.)

ATTESTED COPY. A copy which is certified by a witness to be an exact copy of the original document. (See CERTIFIED COPY.)

The following is a specimen of the form of attestation at the foot of a copy of a document of several pages—

"We have carefully examined this and the two foregoing sheets with the original document and attest it to be a true copy thereof. Dated this day of 19 . . .

{ Clerks with Brown & Jones,
{ Solicitors, Carlisle."

For Stamp Duty, see COPY.

ATTORNEY, LETTER AND POWER OF. (See POWER OF ATTORNEY.)

ATTORNEY, WARRANT OF. (See WARRANT OF ATTORNEY.)

ATTORNMENT. An attornment clause in a mortgage deed is where the mortgagor attorns or acknowledges himself the tenant of the mortgagee, at a rent usually of the same amount as the interest payable under the mortgage. By such a clause the relationship of landlord and tenant is created, and the mortgagee is thereby empowered to distrain for rent, and in that way enforce payment of the interest due on the debt. The rent must be a reasonable one, for if so

excessive that it could never have been intended to be paid, it may be regarded by the Courts as an attempt to give the lender a preference in case of the debtor's bankruptcy.

A bank's mortgage may include a clause to the effect that the mortgagor thereby attorns tenant to the bank of such of the premises as are in his occupation at the yearly rent of a peppercorn, if demanded, provided that the bank at any time may enter into such premises and determine the tenancy thereby created without giving to the mortgagor any notice to quit, and that neither the tenancy created by the attornment nor any receipt of rent shall constitute the bank mortgagees in possession or render them liable to account as such. (See BANKER'S MORTGAGE, MORTGAGE.)

AUDIT. The examination, usually yearly or half-yearly, of books of account, by a person specially appointed, the auditor, for the purpose of ascertaining the correctness of the books. (See AUDITORS.)

AUDITORS. The auditors of a company are appointed by the shareholders, and their particular function is to make an independent investigation of the company's affairs and to report to the shareholders.

The appointment, powers, and duties of auditors are set forth in the following Sections of the Companies Act, 1948—

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 give 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."

AUTHORISED CAPITAL. The capital of a company as authorised by its memorandum of association. It is called also the "nominal" and "registered" capital. (See CAPITAL.)

AUTHORITIES. The authorities which bankers may receive from customers are in connection with many different matters. In all cases they should be in writing, and in many cases bankers have their own printed forms, which they prefer to be used.

Authorities are given for a banker to pay, on certain dates, subscriptions to societies and clubs, premiums on policies, etc., also for

the periodical transfer of an amount from the account of the customer giving the authority to the credit of an account with another bank or of another customer in the same bank. Such transfers are made in accordance with the instructions in the authority, whether weekly, monthly, quarterly, half-yearly, yearly, or on particular dates, or on particular occasions, as, for instance, where an authority is given to transfer a specified amount from a No. 1 account to a No. 2 account when the balance on the latter account is almost exhausted.

Bankers receive instructions to pay calls, to pay over certain sums in exchange for specified documents, and also to hand over documents in exchange for certain sums, and in each case the particular instructions contained in the authority must be carefully observed. A record is made in a diary of all special payments, and in some offices a note may also with advantage be kept in the bill case under the correct date. Where subscriptions and other periodical payments are numerous, it is customary to keep a special book for the purpose, and detail under each day everything which is due to be paid on that day. (See BANKER'S ORDER.)

Authorities are often given in connection with signing upon accounts. In each case particulars of the authority, and, if only for a fixed period, the date of its expiry, should be noted in the ledger against the account. It is an advantage if these authorities are signed in the presence of a bank official. (See JOINT ACCOUNT, MANDATE.)

There are also authorities to give up to a third party articles left for safe custody (see SAFE CUSTODY) and to give up deeds, certificates and other documents which are held as security for an overdraft or loan. When such authorities are acted upon, the person receiving the authorities should, of course, give a receipt for them. Where a customer authorises a banker to lend his securities to a solicitor, an undertaking should be taken from the solicitor to return the securities. (See SOLICITOR'S UNDERTAKING.)

An authority in connection with one matter must not be taken to include another, e.g. an ordinary authority for signing upon an account does not empower the person in whose favour it is given to withdraw securities or arrange an overdraft limit.

For convenience of reference, it is a good plan to sort the authorities into alphabetical cases, or to enter particulars of them in books, duly indexed, each entry and authority being numbered.

AVAL. French. An indorsement upon a foreign bill or promissory note by a person who signs as a surety. An "Aval" is a form of guarantee unknown to English law. The only equivalent is the provision in Section 56 of the Bills of Exchange Act, 1882, which provides that where a person signs a bill otherwise than as drawer or acceptor, he thereby incurs the liabilities of an indorser to a holder in due course.

AVERAGE. The average bank rate is ascertained as follows—

3 % for 20 days,	3 × 20 =	60
4 % for 60 days,	4 × 60 =	240
2½% for 10 days,	2½ × 10 =	25
2 % for 12 days,	2 × 12 =	24
	102)	349

Average for that period = £3 8 5

The average balance of an account is ascertained in the same way—

Balance £2,500 for 20 days =	50,000
£1,800 for 62 days =	111,600
£450 for 18 days =	8,100
£3,260 for 81 days =	264,060
181)	433,760

Average balance for half-year = £2,396

In this example it is supposed that the balance has varied only four times during the half-year.

AVERAGE (IN SHIPPING). The amount payable by the owner of a ship and by the owners of the cargo, in proportion to their individual interests, to make good any loss caused by throwing part of the cargo overboard or cutting away the masts or such like things, in order to prevent the loss of the ship and the rest of the cargo. (See GENERAL AVERAGE.)

AVERAGE ADJUSTER. A person who settles or adjusts the amount to be paid by the owner of the ship and the owners of the cargo, in connection with any intentional losses which have been made for the safety of the ship or the cargo. (See GENERAL AVERAGE.)

AVERAGE BOND. Where a ship has suffered an intentional loss of cargo in order to save the ship and the rest of the cargo, the master of the ship obtains from the consignees of the goods, before delivery is made, a bond under which they agree to pay their

proportion of the general average as soon as the amount is ascertained. (See GENERAL AVERAGE.)

AVERAGE CLAUSE. The clause in a marine insurance policy which may provide that certain articles are free from average, unless general, or the ship be stranded, and that other articles are free from average under, say, three per cent, unless general, or the ship be stranded, sunk, burnt, or on fire.

Under an average clause in a fire policy, in the event of a fire, the amount payable by the insurance company will be, if the property is only partially destroyed, and has not been insured up to the full value of the property, a proportioned amount of the damage, based upon the proportion which the amount insured bears to the full value of the property. Where a property, value £1,000, is insured for £500, and damage by fire occurs to the extent of £300, the amount which the company will pay will be £150—that is, half the loss, because the property was insured for only half its value. It is not usual, however, in the case of insurance of an ordinary dwelling-house to insert an average clause in an English fire policy. A perusal of the policy will show whether or not the clause is included.

AVERAGING (STOCK EXCHANGE). A "bull" speculator on the Stock Exchange buys more of a certain stock he holds, when the price has fallen, so as to make the average price of the whole purchase less than the price paid for the original purchase; and a "bear" speculator, when the price rises against him, sells more of the stock so as to average the price.

AWARD. The decision of an arbitrator upon any matter in dispute which has been referred to him by the disputants.

BACKING A BILL. The indorsement of a bill or cheque by a party who is not the payee or indorsee, for the purpose of acting as surety for the drawer, payee or other party to the instrument. Such a "stiffening" indorsement will make the person so signing liable on the bill although his indorsement was not necessary for its negotiation.

If the bank is the holder of a bill or note payable to its own order, and requires the indorsement of an additional party to the bill for better security, such third party is not liable as indorser to the bank.

If the bank has indorsed the bill or note as payee before getting the "stiffening" indorsement, the bank is a *prior* indorser to the third party, and the latter is only bound to reimburse *subsequent* indorsers. (Bills of Exchange Act, Section 55 (2) (*a*).) If, however, the bank gets the surety's indorsement before indorsing the bill or note itself, it cannot claim to be a holder in due course, because it does not take the bill from the surety "complete and regular on the face of it," in that its own indorsement as payee is lacking.

Hence when a party becomes surety to the drawer of a bill payable to the latter's own order or to the payee of a bill, it is necessary to have evidence additional to the surety's indorsement, showing explicitly if such indorsement was made to secure the drawer or payee, or was merely for the benefit of subsequent holders. Such evidence should take the form of a separate letter acknowledging liability or a note written on the bill by the surety. An oral understanding is insufficient, for, being a contract of suretyship, such an engagement must, by the Statute of Frauds, be in writing.

BACKWARDATION. Where a "bear" speculator on the Stock Exchange wished to continue his account, instead of delivering on the settlement day the securities which he had sold, he arranged with his broker to postpone delivery. In such a case the broker would borrow the stock and pay for it at the "making up" price. If the demand for money by the "bulls" was greater than the demand for the stock in question by the "bears," the "bear" would receive interest (called contango) from the "bull" for the money lent to the "bull" on the borrowed stock, but if the demand for the stock was so great that there was a scarcity of it, the "bear" might have to pay a "backwardation" rate for the loan of the stock instead of the "bull" paying interest for the loan of the money. This practice, abolished on the outbreak of war in 1939 when dealings for cash took the place of fortnightly settlements, was not restored when the latter were resumed in January, 1947. (See CONTANGO, STOCK EXCHANGE.)

BAD AND DOUBTFUL DEBTS. A bad debt is one which is irrecoverable, and a doubtful debt is one the recovery of which, in whole or in part, is uncertain. As soon as a debt is ascertained to be altogether bad, a banker treats it as a loss and writes it off accordingly. With regard to a doubtful debt, a sum is at once set aside out of profits as a provision to meet the whole of the debt or such portion of it as, in the banker's opinion, may ultimately prove to be bad. An account for this purpose is usually called "Provision for bad and doubtful debts."

BAIL BOND. A bond given by a banker on behalf of his customer in order to secure the release of the latter's ship after it has been arrested as a consequence of a collision.

BAILEE. The person to whom goods are entrusted for a specific purpose by another person called the bailor. (See SAFE CUSTODY.)

BAILOR. The person who entrusts goods to another person (the bailee) for a specific purpose. (See SAFE CUSTODY.)

BALANCE BOOK. A book in which balances of accounts are entered in order to prove their accuracy with the balance as shown in the general ledger. For example, the balance book for the current account ledgers contains the names of all the accounts, and the balances, debit or credit, are entered therein weekly, or at such intervals as may be required, the final difference between the debit and credit columns agreeing with the balance of the current account totals account in the general ledger. Small branches prove the current accounts all together, but in large branches it is convenient, and saves much time, to balance each ledger separately. (See DAY BOOK.)

Some banks prove the current account ledgers by taking out the totals of the debit columns and the totals of the credit columns and agreeing each summation with the corresponding summation of totals in the general ledger.

The process of ascertaining if the final totals are correct is called "striking a balance."

BALANCE CERTIFICATE. When a portion of the shares represented by a certificate is sold, the shareholder receives a "balance certificate" for the shares remaining unsold.

BALANCE SHEET. A balance sheet is a statement prepared so as to exhibit on the

one hand the liabilities of a company, or person, and, on the other hand, the assets or property available to meet the liabilities. The liabilities are shown on the left-hand side, and the assets on the right-hand side. As a balance sheet is simply a statement, it is not headed "Dr." and "Cr.," and the words "To" and "By" are not used; these terms being only used for an account.

A balance sheet must be so drawn up as to exhibit a truthful statement of the position. The position should not be represented as being better than it actually is, but the position may be better than is disclosed in the statement. Lord Justice Buckley has said: "The purpose of the 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 and may not be better."

The balance sheet of a company must be signed on behalf of the board by two directors, or, if there is only one, by that director, and the auditors' report must be attached to the balance sheet, and must be read before the company in general meeting and shall be open to inspection by any shareholder. (See Sections 155 and 156 of the Companies Act, 1948.)

Section 127 of that Act requires that the annual return to be filed with the registrar of companies must (except where the company is an exempt private company) include a written copy, certified by a director or the manager or secretary of the company to be a true copy, of the last balance sheet which has been audited, together with a copy of the auditors' report.

Under Section 148 the directors of every company shall once at least in every year lay before the company in general meeting a profit and loss account, also a balance sheet as at the date to which the profit and loss account is made up. There shall be attached to every such balance sheet a report by the directors with respect to the company's affairs, the amount which they recommend should be paid by way of dividend and the amount, if any, which they propose to carry to a reserve fund.

By the Companies Act, 1948, every balance sheet of a company shall contain a summary of the authorised share capital and of the issued share capital, its liabilities and its assets, together with such particulars as are necessary to disclose the general nature of the liabilities and the assets, and to distinguish between the amounts of the fixed assets and of the floating assets, and shall state how the values of the fixed assets have been arrived at. There shall be stated under separate headings, so far as not written off, the preliminary expenses and any expenses incurred in connection with any issue of share capital or debentures, and if it it is shown as a separate item in, or is otherwise ascertainable from, the books of the company, the amount of the goodwill and of any patents and trade marks. (Eighth Schedule.)

Where any liability is secured on any assets of the company, the balance sheet shall include a statement that that liability is so secured, but it shall not be necessary to specify the assets on which the liability is secured. (Eighth Schedule.)

Where any of the assets consist of shares in, or amounts owing from, a subsidiary company, or where a company is indebted to a subsidiary company, the amounts shall be set out in the balance sheet separately from the other assets and liabilities. (Eighth Schedule.)

Every member and every debenture holder of a company—public or private must be sent a copy of the company's balance sheet, profit and loss account and auditor's report not less than 21 days before the annual general meeting (Section 158).

(See other sections under DIRECTORS.)

In the case of a banking company registered after August 15, 1879, the balance sheet must be signed by the secretary or manager, 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 (Section 155 (2)).

Every limited banking company must, on the first Monday in February and the first Tuesday in August in every year, make a statement of its capital, liabilities and assets in a prescribed form, and display a copy in its registered office and in every branch or place of business (Section 433). (See BANKING COMPANY.)

The auditors' certificate and report on a bank's balance sheet is usually in a form similar to the following—

"We beg to report to the shareholders that we have examined the books and accounts of the X & Y Banking Company, Limited, at December 31, 19 . . , along with the securities representing the investments of the bank or held against loans, the bills discounted, the cheques on other banks *in transitu*, the money at call and short notice, and the cash balances at the head office and at several of the branch offices. We

have obtained all the information and explanations which we have required, and, in our opinion, the foregoing balance sheet is properly drawn up so as to exhibit a true and correct view of the state of the bank's affairs, according to the best of our information and the explanations given to us, and as shown by the books of the company."

In order to obtain a clear view of the position as shown by a balance sheet it is desirable to group the items under various headings. On the liabilities side the items should be arranged in three groups—

(1) Liabilities to the shareholders (or proprietors).

(2) Liabilities to the public.

(3) Liabilities such as reserve accounts.

On the assets side, the items should be arranged into four groups—

(1) Fixed assets. (Land, buildings, plant, machinery, etc.)

(2) Circulating assets. (Book debts, stocks in hand, work in progress, etc.)

(3) Liquid assets. (Cash in hand, bank balances, realisable securities, etc.)

(4) Intangible assets. (Preliminary expenses, debenture discount, goodwill, patent rights, etc.)

It should be noted that items such as "reserve for depreciation," on the liabilities side, are not direct liabilities either to the shareholders or to the public, and that intangible assets such as "preliminary expenses," "debenture discount," are not assets at all, but represent irrecoverable outlay. Such items, permissible in a company's balance sheet, should be wiped out from profits as soon as possible. Goodwill, another intangible asset, has a value only in connection with a going concern. The whole of the intangible assets should, therefore, be excluded by a banker from a balance sheet which he is considering in view of an application for a loan.

It is very desirable to compare a balance sheet with the statements for several previous years, and to note any important variations. The trading account and profit and loss account should also be scrutinised.

In many balance sheets several items are often included in one amount, but it is important for a banker to ascertain what is the actual amount for each of the individual items, so that he may arrive at a proper understanding of the position.

In considering a customer's balance sheet, a banker should scrutinise each individual item, and not be satisfied merely by ascertaining the difference between the total of the assets and the total of the liabilities. As to the liabilities, it may be taken for granted that the customer will have to meet all he has shown to the full extent, but there may be items on that side of the sheet which have been omitted or forgotten, and there may also be contingent liabilities, as, for example, in respect of any guarantees he may have given, which will not appear on his balance sheet. Such contingent liabilities should be revealed to the banker, as it is necessary that they be taken into account in obtaining a correct estimate of a person's position. If bills have been discounted for the customer, his liability for any which may be dishonoured should not be overlooked. The natural tendency is to minimise liabilities and to swell assets.

Ascertain whether the capital shown in the balance sheet of a private trader is his own or whether it has been borrowed and not disclosed.

It is important to note whether the assets which are shown on a balance sheet are of such a nature as to be readily realisable, or whether they are "tied up" and would be difficult to realise. Do the circulating and liquid assets show a good margin in excess of the current liabilities to the public (excluding debentures and loans)?

In considering the assets, the item "book debts" calls for inquiry. Is the money owing by reliable parties? Are the debtors few and the individual amounts large, or is the total spread over a large number of persons? If any portion is bad or doubtful the banker will not regard it as an asset. Has any provision been made for bad and doubtful debts? As to the value of the "stock," as shown in the balance sheet, it should be ascertained if it is taken at cost price or at the present market price. An increased value in the stock due to the current market price should not be entered in the balance sheet. Have the figures been obtained from an actual stocktaking? The nature of the stock must not be forgotten, because certain articles do not improve by keeping, or they may go out of fashion and have practically no value. A farm stock should be put down in a balance sheet at what it will sell for at present, not at what the farmer anticipates it will produce two or three months ahead. It does not necessarily follow that all the sheep on a farm belong to the farmer who owns or rents the farm, nor that the stock in a shop always belongs to the shopkeeper. It is necessary to bear in mind that the value of the stock of a going concern

is, as a rule, very different from that which prevails when the business comes to an end and the stock is sold by auction.

If the customer owns property it is desirable to ascertain the nature of the property and also whether the value in the balance sheet is a fair one. If there are any mortgages upon the property the amounts must, of course, be deducted, but as margins frequently disappear when the property is realised to repay the mortgage, it is not wise, as a rule, to rely upon an asset of that description. The value of the property and the amount of the mortgage must be shown.

If the value of any shares is included, the present price should be ascertained, and a note made of any liability on the shares.

If the statement shows the existence of private loans, particulars should be furnished of the security which is held.

Each balance sheet must be separately studied in connection with the peculiarities of each trade, but, as a rule, the amount of book debts and stock as shown in a balance sheet requires a considerable allowance to be made in order to arrive at what may be regarded as the approximate sum which would be obtained if the debts were suddenly called in or the stock realised under the hammer. After allowing a liberal margin for that object, the banker should notice if the customer is in such a sound position that all his current liabilities could be cleared off, without requiring any amount which may be entered as the value of the premises in which his business is conducted. The value of the premises is not an asset to be relied upon in times of difficulties. Machinery, plant and similar assets should be regularly written down to provide for depreciation, and a reserve fund for their replacement should be established. The difference between depreciation and a reserve is described by Philip Tovey, F.C.I.S., in his book on *Balance Sheets*, as follows: "Depreciation should be written off before arriving at the year's profits; the reserve is built up by setting aside portions of the profit itself. Depreciation represents the estimated wear and tear which will ultimately reduce the property and plant to scrap value; reserve represents the amounts kept in readiness to replace such property and plant when finally they have to be scrapped." The proper method is for the amount allowed for depreciation to be shown in the balance sheet, duly deducted from the value of the asset concerned. Reserves, whether for specific purposes such as the replacement of plant, machinery, etc., or for the purpose of providing a fund for unforeseen losses, if invested outside the business in sound interest-bearing securities, will be realisable when the funds are required, but if merely invested in the business the funds will probably not be available when they are needed.

It should be ascertained whether or not interest upon capital has been deducted before arriving at the profits for the year.

A banker may have, in many cases, to help a customer in making out a balance sheet, and much may be done to assist in obtaining a statement from which nothing material has been omitted, and in which none of the assets is over-valued. Such a balance sheet should be signed by the customer. Balance sheets should be preserved so that a new one may be compared with the previous ones.

The most satisfactory form of private balance sheet is one that is certified by an auditor or accountant.

If the balance sheet of a company shows that debentures have been issued, the banker should give particular attention to the assets which are covered by the debentures. Are the debentures irredeemable, or are they repayable at a certain date? If they mature at an early date, what provision has been made for their repayment? Has a redemption or sinking fund been established and is it invested outside the business?

Ascertain if there has been a recent independent valuation of the fixed assets by an expert, and, if so, how does his valuation compare with the figures in the balance sheet? Scrutinise an auditor's certificate to see if any special remarks are made, such as "sufficient depreciation has not been allowed."

Where debentures have been issued by a company to a bank as security for a loan, the full amount of the debentures must, properly, be shown in an inner column of the company's balance sheet with a note to the effect that they are held by the bank as security, and under the heading "bank overdraft" on the balance sheet, there should be a note to the effect that it is secured by the issue of £ . . debentures. A balance sheet which omits any mention of the fact that debentures have been issued as security does not give a correct view of the state of the company's affairs. (See DEBENTURE.)

A readiness on the part of a customer to supply particulars of his position begets confidence in a banker's mind. George Rae, in *The Country Banker*, says: "The solid man of business who, from pride or prejudice, hesitates to disclose the position of his

business affairs to the confidential ears of his bankers, damnifies himself in two ways: on the one hand, he lessens the full measure of credit which he might obtain from them should he ever desire to borrow; on the other, he fails to furnish them with data whereon to speak of his position, with knowledge and decision, in reply to inquiries from without."

In the usual form of a balance sheet the liabilities appear on the left and the assets on the right, that is the opposite sides from those on which the balances appear in the books. In the balance sheets of many companies, particularly in Scotland, the liabilities are usually placed on the right and the assets on the left, thus corresponding to the sides on which the balances appear in the books. In America a large number of companies merely place the liabilities under the assets and extend the two totals.

In England a bank's half-yearly balance takes place at 30th June and 31st December, but in Scotland some of the banks adopt other dates.

BALANCE TICKET. Where a certain number of shares has been sold and the certificate, which is sent by the seller's broker to the company's office for certification, is for a larger number than has been sold, a balance ticket is given to the broker for the remaining shares. When the new certificate for the unsold shares is ready, it can be obtained on delivery of the balance ticket. (See CERTIFIED TRANSFER.)

BANK. The word "bank" is said to be derived from the Italian word *banco*, a bench. The early bankers, the Jews in Lombardy, transacted their business at benches in the market-place. When a banker failed his *banco* was broken up by the people, whence our word "bankrupt."

One of the earliest Italian banks, the Bank of Venice, was originated for the management of a public loan, or *monte*, as it was called. Macleod, in his *Elements of Banking*, says: "At that period the Germans were masters of a great part of Italy; and the German word *banck* came to be used as its Italian equivalent *monte*, and was Italianised into *banco*, and the loans were called indifferently *monti* or *banchi*."

"The relation between banker and customer is that of debtor and creditor, with a superadded obligation on the part of the banker to honour the customer's cheques if the account is in credit." (*London Joint Stock Bank, Ltd.* v. *Macmillan and Arthur*, [1918] A.C. 777. See that case under ALTERATIONS.) (See BANKER AND CUSTOMER.)

The principal business of a banker is to receive money from customers either on current account or on deposit account, and in the former case to pay cheques drawn by the customers. A banker also discounts bills and promissory notes, and makes advances either by way of a loan or of an overdraft. He undertakes the agency of other British banks and of foreign banks, effects purchases and sales of securities, collects cheques, dividends, coupons, and foreign bills, makes periodical and other payments, pays customers' acceptances, issues drafts, circular notes and letters of credit, conducts foreign exchange business, and remits funds to almost any part of the world; accepts bills for customers, undertakes the office of executor and trustee, and takes charge of securities and other valuables for customers. A banker often acts as treasurer for a local authority, and sometimes manages the issue of a loan for a foreign Government or for a corporation. (See further under CUSTODIAN TRUSTEE.)

With reference to the use of the word "bank," Mr. Justice Eve expressed an opinion in the case of *Saunders* v. *Carbonneau* (1910, unreported) that the "time has arrived when the legislature might well impose some restriction on the indiscriminate use of the term 'bank' by individuals and corporations whose business has no relation to banking, properly so-called."

(See Sections 429–433 of the Companies Act, 1948, under BANKING COMPANY.)

The Moneylenders Act, 1911, Section 2 (see MONEYLENDER), prohibits the registration of a moneylender under any name including the word "bank," or implying that he carries on banking business.

There is no statutory definition of a bank. The definition in Section 2 of the Bills of Exchange Act, 1882, is ineffectual and from time to time attempts have been made in statutes to define the term for particular purposes—such as the Moneylenders Act, 1911, the Finance (No. 2) Act, 1915; the Agricultural Credits Act, 1928, Pt. II, where "bank" means a bank approved by the Minister of Agriculture and Fisheries. A bill was promoted in 1921 with a view to giving a legal status to a bank, but it never got on the Statute book.

The making of a Return under the Bank Charter Act, 1844, or the Companies Act, 1948, does not of itself constitute the party making the Return a banker.

Sir John Paget, K.C., considered that the four tests of banking business are—

(*a*) The taking of deposits.

(*b*) The taking of current accounts.
(*c*) The payment of cheques.
(*d*) The collection of cheques.

Furthermore, these activities must not be subsidiary to another business carried on by the same concern.

A bank is entitled to protect itself against an employee obtaining a situation in another bank in the same district. "What an employer is entitled to protection against is the use by the employee against him in his business of knowledge obtained by him of his employer's affairs and the influence acquired by him over his customers in the course of an ordinary trade, and, in the case of a professional man, over what is more commonly called his clients." (*Dewes* v. *Fitch*, [1921] A.C. 158; 36 T.L.R. 585.) In *Spence* v. *Mercantile Bank of India, Ltd.* (1921), 37 T.L.R. 390: "The only way in which the former employer can protect himself is by some reasonable restriction against the employee entering an employment where such knowledge could be used." In this case it was held that the restriction covered too wide an area. This decision was reversed by the Court of Appeal (1921), 37 T.L.R. 745, when it was held that the restriction was not wider than was necessary for the reasonable protection of the defendants.

The word "bank" is sometimes used in the singular and sometimes in the plural. It is customary to say, e.g. "the bank has a note issue," "the bank allows 2 per cent interest," "the bank have considered your application," "the bank are willing to grant the loan." (See BANK AS EXECUTOR AND TRUSTEE, BANK OF DEPOSIT, BANK OF ENGLAND, BANK OF ISSUE, BANKING COMPANY, CHARTERED BANK, MUNICIPAL BANK, PRIVATE BANK.)

BANK ACCEPTANCE. A bill accepted by a bank. A merchant in this country, purchasing, say, cotton in America, may arrange for his bankers to accept a bill drawn on them by the shippers in America, the various shipping documents being attached to the bill. The shipper may then sell the bill and thus receive immediate payment for the cotton. (See DOCUMENTARY CREDIT.) Banks show the total of these acceptances in their balance sheet as a liability with a contra entry on the assets side of the customers' liability to the bank. (See BALANCE SHEET.)

BANK AMALGAMATIONS. A Treasury Committee was appointed in 1918 to consider and report to what extent, if at all, amalgamations between banks may affect prejudicially the interests of the industrial and mercantile community, and whether it is desirable that legislation should be introduced to prohibit such amalgamations or to provide safeguards under which they might continue to be permitted. In the Report of that Committee, the following recommendations were made—

"We therefore recommend that legislation be passed requiring that the prior approval of the Government must be obtained before any amalgamations are announced or carried into effect. And, in order that such legislation may not merely have the effect of producing hidden amalgamations instead, we recommend that all proposals for interlocking directorates, or for agreements which in effect would alter the status of a bank as regards its separate entity and control, or for purchase by one bank of the shares of another bank, be also submitted for the prior approval of the Government before they are carried out.

"As general principles to be acted upon at present by the Government at its discretion, we would suggest that a scheme for amalgamating or absorbing a small local bank, or any scheme of amalgamation designed to secure important new facilities for the public or a really considerable and material extension of area or sphere of activity for the larger of the two banks affected, should normally be considered favourably, but that if an amalgamation scheme involves an appreciable overlap of area without securing such advantages, or would result in undue predominance on the part of the larger bank, it should be refused. Consideration should also, in our opinion, be given to the undesirability of permitting an unusual aggregation of deposits without fully adequate capital and reserves.

"It only remains to make a suggestion as to which Government department or departments should be charged with the responsibility of approving or disapproving amalgamation schemes, etc., under our proposal above. On the whole, we think that the approval both of the Treasury and of the Board of Trade should be obtained and that legislation should be passed requiring the two departments to set up a special Statutory Committee to advise them, the members of which should be nominated by the departments from time to time, for such period as may seem desirable, and should consist of one commercial representative and one financial representative, with power to appoint an arbitrator, should they disagree." (See NOVATION.) The latest amalgamation took place in 1939, when the Union Bank

of Manchester was absorbed by Barclays Bank, Ltd., no objection being raised by the Treasury.

BANK AS EXECUTOR AND TRUSTEE. The trustee department or company of a bank undertakes the following functions—

Executorship and/or trusteeship of wills; administration of wills; administration of estates of intestates; attorney administrations; trusteeship of settled legacies or funds; trusteeship of new settlements; trusteeship of trust agreements or declarations; custodian trusteeships; receiverships; pension schemes.

The appointment of a bank trustee company eliminates the trouble and expense which follow upon the death or retirement of private trustees. It secures also the advantages of expert administration, continuity, security, secrecy, audit of the trust accounts and impartiality.

The remuneration of the trustee must be authorised by the terms of the will or settlement, or, when an existing trust is taken over, by the beneficiaries.

When the bank acts as custodian trustee it may charge and retain out of the trust property fees not exceeding the fees chargeable by the public trustee acting as custodian trustee. (See CUSTODIAN TRUSTEE.)

A bank trustee company is a "Trust Corporation" within the meaning of the Law of Property Act, 1925, and the Trustee Act, 1925. (See TRUST CORPORATION.)

BANK BILL. A bill which is drawn or accepted by a bank. The discount rates for bank bills are less than the rates for fine trade bills; for example, when the rates for three months' bank bills are quoted at 2⅜ per cent, trade bills may be quoted at, say, 3½ to 4.

BANK BOOK. A name sometimes given to a pass book.

BANK BUILDINGS. (See BANK PREMISES.)

BANK CHARTER ACT, 1844 (7 & 8 VICT. c. 32). An Act to regulate the issue of bank notes and for giving to the Governor and Company of the Bank of England certain privileges for a limited period. The Act was passed on 19th July, 1844. By the Currency and Bank Notes Act, 1928, various sections of the Bank Charter Act were repealed, see under BANK OF ENGLAND, and CURRENCY AND BANK NOTES ACT, 1928. The main provisions of the Bank Charter Act, before these repeals, were: The Bank of England was to be divided into two departments, the issue department and the banking department. The directors were to transfer to the issue department securities to the extent of £14,000,000, of which the debt due by the public was to be a part, and also so much of the gold coin, gold and silver bullion as should not be required for the banking department, in exchange for bank notes.

The Act gave the Bank of England a monopoly of note issue within a radius of three miles from the City of London.

After the passing of the Act there were to be no new banks of issue in any part of the United Kingdom, and, if a banker ceased to issue his own notes, the Bank of England was empowered to increase its note issue against public securities by two-thirds of the amount of such issue withdrawn from circulation. A bank issuing notes on 6th May, 1844, was allowed to continue to issue to an average amount as ascertained by the average amount of the bank's notes in circulation for twelve weeks preceding 27th April. Issuing banks were to render accounts to the Commissioners of Inland Revenue.

By Section 11, "it shall not be lawful for any banker to draw, accept, make, or issue, in England or Wales, any bill of exchange or promissory note or engagement for the payment of money payable to bearer on demand," except in the case of those banks which were issuing their own notes in 1844. (The exception was repealed by the Currency and Bank Notes Act, 1928.)

Previous to the passing of this Act bankers issued notes without restrictions, and it was anticipated that the restrictions imposed by the Act would have a beneficial effect in preventing the evils from which the country had suffered through an unrestricted issue. The working of the Act was soon tested. In 1847 a severe crisis occurred, but the Act did not fulfil what had been expected, and in order to save the situation the Government had to intervene and authorise the Bank to issue notes in excess of the amount as fixed by the Act. This is called the "Suspension of the Bank Act," and it was successful in restoring confidence. In November, 1857, another crisis occurred, and again the Government gave permission to the Bank to exceed its authorised issue, with the same result as on the previous occasion. In May, 1866, the Act was suspended for the third time, and, as before, the trouble soon passed away. H. D. Macleod says the expansive theory "was the only means of saving the Bank itself as well as every other bank from stopping payment. Thus we see the entire failure of Peel's expectations (that is, the restrictive theory in the Bank Charter Act). He took away the power of unlimited

issues from the Bank, and imposed a rigorous numerical limit on its powers of issue, under the hope that he had prevented the recurrence of panics. But the panics recurred with precisely the same regularity as before; and therefore, in this sense, the Act has failed; and when monetary crises do occur, it is decisively proved that it is wholly incompetent to deal with them."

On the outbreak of war with Germany in August, 1914, the Government issued an emergency paper currency of £1 and 10s. notes. (See MORATORIUM.) On 1st August, 1914, the Prime Minister and the Chancellor of the Exchequer sent a letter to the Bank of England authorising the suspension of the Bank Act. In answer to a question in the House of Commons (9th November, 1915) as to whether the Bank Act was, in fact, suspended in August, 1914, the Prime Minister said: "The authority of 1st August was never acted upon, and was succeeded by Section 3 of the Currency and Bank Notes Act, 1914, which received the Royal Assent on 6th August. On 7th and 8th August, as adequate supplies of currency notes were not for the moment available, certain notes of the Bank of England were used, at the request of the Treasury, for the purpose of advances to bankers under the Currency and Bank Notes Act, the maximum excess involved being £3,043,000. By 10th August the position as regards the bank notes had become normal in all respects." Section 3 provided that "the Governor and Company of the Bank of England and any persons concerned in the management of any Scottish or Irish bank of issue may, so far as temporarily authorised by the Treasury and subject to any conditions attached to that authority, issue notes in excess of any limit fixed by law; and those persons are hereby indemnified, freed, and discharged from any liability, penal or civil, in respect of any issue of notes beyond the amount fixed by law which has been made by them since 1st August, 1914, in pursuance of any authority of the Treasury, or of any letter from the Chancellor of the Exchequer, and any proceedings taken to enforce any such liability shall be void."

In 1928 the currency note issue of the Treasury was transferred to the Bank of England. (See CURRENCY AND BANK NOTES ACT, 1928.)

The Act regulating the issue of notes in Northern Ireland is 8 & 9 Vict. c. 37, and the corresponding Act for Scotland is 8 & 9 Vict. c. 38. (See BANK NOTES, BANK OF ENGLAND, BANK OF ISSUE.)

BANK CLERKS' ORPHANAGE. Office: 34 Threadneedle Street. E.C.2. Instituted 1883; incorporated, 1884, under the Companies Acts.

The object of the Institution is the maintenance and education of children of subscribing bank officials deprived of a father's care and protection. Such children are ordinarily eligible for admission between the ages of six and eleven. The Orphanage has no buildings and no uniform. The children are placed in suitable boarding schools and the cost of their education, maintenance, clothing, medical attendance, etc., is undertaken until they are sixteen years of age. The management of the Orphanage is in the hands of representatives of the leading banks. Since its foundation, the total number of children admitted is over 950. The minimum annual subscription is 5s.

BANK DRAFT. See BANK BILL.

BANK FOR INTERNATIONAL SETTLEMENTS. The "B.I.S." was created in May, 1930, chiefly for the purpose of facilitating the transfer and mobilisation of German reparation payments arising out of the First World War. In addition, it was formed in order to study the problems arising out of international indebtedness and to devise methods of securing exchange stability. Its headquarters are at Basle and it has no branches. The share capital (Swiss gold francs 500,000,000, of which 25 per cent is paid up) was subscribed by the central banks (*q.v.*) of the nations chiefly interested in the reparations, and nominees of those nations constitute the board of directors. A year after its foundation it was faced by the European banking crisis of 1931. In an effort to avert the crisis, the B.I.S. granted substantial credits to the Central Banks of Germany, Austria, Hungary, and Yugoslavia, but it had not the resources to allow it to intervene on a large enough scale, and its ability to grant further help ceased when its Central Bank depositors proceeded to withdraw their deposits.

In 1932 reparations were cancelled, leaving the B.I.S. with its function of trustee-administrator of various funds and its agency business on behalf of certain international organisations. Its international banking business continued on a limited scale and its services proved useful as a clearing institution for transfers of gold. The Bank also provided frequent opportunities for meetings of the heads of the various central banks. But difficulties in the field of international payments in the years preceding the Second World War dashed any hopes

that may have been held at the time of its foundation that the B.I.S. might come to occupy a key position in international finance.

The position of the Bank was greatly complicated by the Second World War. Its official attitude was one of strict neutrality, but rather naturally its neutrality was suspect when Switzerland was completely surrounded by nations under German domination or influence. It was thought that in any case its position was anomalous and that it should be liquidated. That process, however, presented difficulties once the War had begun, and the Bank continued in being though no British representative took any part in its management. British participation was not completely withdrawn, as it was not desired that control should pass into enemy hands.

As the War neared its conclusion and proposals were put forward for the future conduct of international finance, the question once more arose of what useful purpose the B.I.S. could serve, particularly when the International Bank for Reconstruction and Development (*q.v.*) came into being. It was argued, however, that the B.I.S. could carry through certain classes of transactions which were not within the legal powers of its new rival. It might usefully grant small credits to central banks, in certain circumstances, to the extent of its limited resources. The Bank, therefore, continues in business.

The statistical work of the B.I.S. has always been of a high quality, and its Annual Report is a very full and informative document on many aspects of international finance.

BANK HOLIDAYS. The Act (34 Vict. c. 17) making provision for bank holidays, and respecting obligations to make payments and do other acts on such bank holidays, was passed on 25th May, 1871. The Act is as follows—

"Whereas it is expedient to make provision for rendering the day after Christmas Day, and also certain other days, bank holidays, and for enabling bank holidays to be appointed by royal proclamation:

"Be it enacted by the Queen's most excellent Majesty, by and with the advice and consent of the Lords Spiritual and Temporal, and Commons, in this present Parliament assembled, and by the authority of the same, as follows—

Bills due on Bank Holidays to be Payable on the Following Day.

"Section 1. After the passing of this Act the several days in the Schedule to this Act mentioned (and which days are in this Act hereinafter referred to as bank holidays) shall be kept as close holidays in all banks in England and Ireland and Scotland respectively, and all bills of exchange and promissory notes which are due and payable on any such bank holiday shall be payable, and in case of non-payment may be noted and protested, on the next following day, and not on such bank holiday, and any such noting or protest shall be as valid as if made on the day on which the bill or note was made due and payable; and for all the purposes of this Act the day next following a bank holiday shall mean the next following day on which a bill of exchange may be lawfully noted or protested.

Provision as to Notice of Dishonour and Presentation for Honour.

"2. When the day on which any notice of dishonour of an unpaid bill of exchange or promissory note should be given, or when the day on which a bill of exchange or promissory note should be presented or received for acceptance, or accepted or forwarded to any referee or referees is a bank holiday, such notice of dishonour shall be given and such bill of exchange or promissory note shall be presented or forwarded on the day next following such bank holiday.

As to any Payments on Bank Holidays.

"3. No person shall be compellable to make any payment or to do any act upon such bank holidays which he would not be compellable to do or make on Christmas Day or Good Friday; and the obligation to make such payment and do such act shall apply to the day following such bank holiday; and the making of such payment and doing such act on such following day shall be equivalent to payment of the money or performance of the act on the holiday.

Appointment of Special Bank Holidays by Royal Proclamation.

"4. It shall be lawful for Her Majesty, from time to time, as Her Majesty may seem fit, by proclamation in the manner in which solemn fasts or days of public thanksgiving may be appointed, to appoint a special day to be observed as a bank holiday, either throughout the United Kingdom or in any part thereof, or in any county, city, borough, or district therein, and any day so appointed shall be kept as a close holiday in all banks within the locality mentioned in such proclamation, and shall, as regards bills of exchange and promissory notes payable

in such locality, be deemed to be a bank holiday for all purposes of this Act.

Day Appointed for Bank Holiday may be altered by Order in Council.

"5. It shall be lawful for Her Majesty in like manner, from time to time, when it is made to appear to Her Majesty in Council in any special case that in any year it is inexpedient that a day by this Act appointed for a bank holiday shall be a bank holiday, to declare that such holiday shall not in such year be a bank holiday, and to appoint such other day as to Her Majesty in Council may seem fit to be a bank holiday instead of such day, and thereupon the day so appointed shall in such year be substituted for the day so appointed by this Act.

Short Title.

"7. This Act may be cited for all purposes as 'The Bank Holidays Act, 1871.'

Schedule.

Bank Holidays in England and Ireland.

"Easter Monday.

The Monday in Whitsun Week.

The first Monday in August.

The 26th day of December, if a week-day."

(If the 26th December is a Sunday, Monday, 27th December, shall be a bank holiday. See Section 2 of the Act of 1875 given on this page.)

Bank Holidays in Scotland.

"New Year's Day.

Christmas Day.

If either of the above dates falls on a Sunday the next following Monday shall be a bank holiday.

Good Friday.

The first Monday of May.

The first Monday of August."

By 3 Edw. 7, c. 1, Bank Holiday (Ireland) Act, 1903, St. Patrick's Day, 17th March, when a week-day shall be a bank holiday, but if 17th March is a Sunday, 18th March shall be a bank holiday.

Christmas Day and Good Friday, which are common law holidays in England and Ireland, are statutory holidays in Scotland.

HOLIDAYS EXTENSION ACT, 1875 (38 Vict. c. 13).

"Whereas it is expedient to amend 'The Bank Holidays Act, 1871' (in this Act referred to as the Holidays Act of 1871), and to extend certain of the holidays named therein to the customs, bonded warehouses and docks, and to amend the Acts relating to holidays in the inland revenue offices in England and Ireland—

"Be it therefore enacted, etc.

Days mentioned in Schedule to be Holidays.

"Section 1. From and after the passing of this Act, the several days and each and every of them in the Schedule to this Act mentioned, being holidays under the Holidays Act of 1871, shall be kept as public holidays in the customs, inland revenue offices, and bonded warehouses in England and Ireland respectively; and it shall be lawful for the directors or governing body (by whatever name known) of any dock or docks in England and Ireland respectively to cause the said days or any of them to be kept as holidays in such dock or docks, any restraining clause in any Act of Parliament notwithstanding: Provided that such directors or governing body shall give notice thereof by inserting an advertisement to that effect in some newspaper circulating in the locality of such dock or docks, and by affixing to the principal gates of the said dock or docks, or to some conspicuous place in the immediate neighbourhood, a notice to the same effect for at least a week immediately preceding any day which it is intended to observe as a holiday under this Act; and the anniversary of the coronation of Her Majesty and her successors, and the birthday of the Prince of Wales, shall no longer be kept as holidays in any inland revenue office in England or Ireland.

December 26th falling on Sunday.

"Whenever the 26th day of December shall fall on a Sunday, the Monday immediately next following, that is to say, the 27th day of December, shall be a holiday under this Act, and also under the Holidays Act of 1871.

Short Title.

"4. This Act may be cited for all purposes as 'The Holidays Extension Act, 1875.'

Schedule

"Easter Monday.

Monday in Whitsun week.

The first Monday in August.

The 26th of December (if a week-day)."

With respect to the three days of grace which are allowed upon a bill which is not payable on demand, the bill is due and payable on the last day of grace; Provided that

"(*a*) When the last day of grace falls on Sunday, Christmas Day, Good Friday, or a day appointed by Royal proclamation as a public fast or thanksgiving day, the bill is, except in the case hereinafter provided for, due and payable on the preceding business day;

"(*b*) When the last day of grace is a bank holiday (other than Christmas Day or Good Friday) under the Bank Holidays Act, 1871, and Acts amending or extending it, or when the last day of grace is a Sunday and the second day of grace is a bank holiday, the bill is due and payable on the succeeding business day." (Section 14, Bills of Exchange Act, 1882.)

For the purposes of the Bills of Exchange Act, non-business days mean—

(*a*) Sunday, Good Friday, Christmas Day:

(*b*) A bank holiday under the Bank Holidays Act, 1871, or Acts amending it:

(*c*) A day appointed by Royal proclamation as a public fast or thanksgiving day.

Any other day is a business day. (Sect. 92.) (See TIME OF PAYMENT OF BILL.)

BANK HOLIDAYS ACT, 1871. (See BANK HOLIDAYS.)

BANK HOURS. The hours during which banks are open to do business with the public do not vary very much. The bankers in any one town generally agree to act together as to the hours when the doors will be opened and closed. From 9 or 10 a.m. till 3 p.m. are the hours which are usually considered sufficient, though in some market towns the banks continue open for an extra hour upon market days. In very small towns or in villages, the hours may be much shorter, and are regulated according to the amount of business to be done. Sub-branches are, in some cases, open only for two or three hours once a week, or as may be found necessary.

On the occasion of local holidays, bankers may agree to be open for only, say, an hour, or they may agree to close altogether, and in such cases due notice of the holiday must be exhibited in the bank for some time previously. When a banker closes upon a local holiday he must arrange for bills falling due to be attended to and also see if there is anything urgent in the remittances and correspondence.

Most banks have one half-day holiday in the week and close at either 12 or 1 o'clock. As to position where a cheque is presented and paid after the advertised hour for closing, see *Baines* v. *National Provincial Bank, Ltd.*, under AFTER HOURS.

BANK INTEREST CERTIFICATE. A certificate given to a borrower on Revenue Form R.62 in order that he may claim rebate of income tax in respect of interest paid by him on his advance. No alteration of the printed matter is permissible except that of the terminal date where the certificate is for part of a fiscal year. A certificate can only be issued in cases where interest charged has been taken to profits.

A guarantor who discharges his liability cannot claim a certificate in respect of that portion of the debt representing interest due from the debtor. (See INCOME TAX.)

Where a guarantor is given time to pay on condition of paying interest on the sum due, he cannot of right claim a Bank Interest certificate in respect of such interest payments, but, in practice, Inspectors of Taxes will recognise certificates given in such cases.

BANK NOTES. Bank notes are promissory notes issued by a bank and payable to bearer on demand, but unlike promissory notes they may be re-issued after payment. They are practically money and in the ordinary course of business are treated as cash.

The definition of a bank note by 17 & 18 Vict. c. 83, Section 11, is: "All bills, drafts, or notes other than notes of the Bank of England which shall be issued by any banker, or the agent of any banker, for the payment of money to the bearer on demand; and all bills, drafts, or notes so issued which shall entitle or be intended to entitle the bearer or holder thereof, without indorsement, or without any further or other indorsement than may be thereon at the time of the issuing thereof, to the payment of any sum of money on demand, whether the same shall be so expressed or not, in whatever form and by whomsoever such bills, drafts, or notes shall be drawn or made, shall be deemed to be bank notes of the banker by whom or by whose agent the same shall be issued within the meaning of the 7 & 8 Vict. c. 32, and 8 & 9 Vict. cc. 37 & 38."

The Chinese are said to have been the inventors of bank notes about the year 119 B.C.

The origin of bank notes in England is to be found in the receipts which goldsmiths gave for money left with them for safe keeping. At first they were special promises with regard to some particular money in their possession, but afterwards they became general promises to deliver a sum of money on demand.

Bank notes have relieved bankers and the public generally from many inconvenient transfers of large quantities of coins, which would otherwise have been necessary. Professor Jevons says: "I find that a Bank of England note weighs about 20½ grains, whereas a single sovereign weighs about 123 grains, and the note may represent five,

ten, fifty, a thousand or ten thousand such sovereigns with slight differences in printing."

Notes for less than £5 were prohibited in England by an Act of 1826 (7 Geo. IV, c. 6, Section 3). By the Currency and Bank Notes Act, 1928, the Bank of England was empowered to issue bank notes for £1 and for 10s. (Section 1 (1).)

In Scotland and Northern Ireland, banks of issue may issue notes for £1 and upwards.

The note issue of England and Wales is now in the sole hands of the Bank of England as a result of the provisions of the Bank Charter Act, 1844 (the last note-issuing bank (Fox Fowler & Co.) being absorbed by Lloyds Bank in 1921), and of the Currency and Bank Notes Act, 1928, which transferred the issue of £1 and 10s. notes from the Treasury to the Bank of England.

On the outbreak of war with Germany in 1914, the Government issued an emergency paper currency of £1 and 10s. notes. (See CURRENCY NOTES.)

The currency note issue of the Treasury was transferred to the Bank of England in 1928. (See CURRENCY AND BANK NOTES ACT, 1928.)

(See BANK CHARTER ACT, BANK OF ENGLAND NOTES, BANK OF ISSUE, COMPOSITION, COUNTRY BANK NOTES, FORGERY, HALF NOTES, INDORSEMENT ON BANK NOTE, LEGAL TENDER, NOTE REGISTER, NOTE RETURN, PAYMENT STOPPED (NOTES), POST, STATUTE OF LIMITATIONS, STOLEN BANK NOTES, CURRENCY AND BANK NOTES ACT, 1928, Section 6.)

BANK OF CIRCULATION. The same as BANK OF ISSUE (*q.v.*).

BANK OF DEPOSIT. A term applied to banks which receive deposits from their customers but are not empowered to issue their own notes, to distinguish them from "banks of issue" which are authorised to issue their own notes.

BANK OF ENGLAND. In the year 1691, William Paterson, a native of Dumfriesshire, submitted to the Government a plan for the establishment of a national bank, and in the year 1694 the Bank of England, which has since become the greatest banking institution n the world, was incorporated by Act 5 & 6 William & Mary. The Act is entitled "An Act for granting to their Majesties several duties upon tonnage of ships and vessels, and upon beer, ale, and other liquors, for securing certain recompenses and advantages in the said Act mentioned, to such persons as shall voluntarily advance the sum of fifteen hundred thousand pounds towards carrying on the war with France." The Act authorised the raising of £1,200,000 by voluntary subscription, the subscribers to be incorporated under the style of "The Governor and Company of the Bank of England." The sum of £300,000 was also authorised to be raised by subscription and annuities granted to the subscribers. All the money was quickly subscribed, and a charter was granted on 27th July, 1694, for eleven years, and it has since then been renewed from time to time.

Within three years the Bank was compelled to suspend payment.

In 1708, when the Bank Charter was renewed, a clause was inserted constituting the Bank of England the only joint stock bank in England. In 1718 subscriptions for Government loans were for the first time received at the Bank, and the Bank has been employed by the Government in similar transactions ever since such time.

In 1720 the Bank found itself in danger of being involved in the South Sea Company's ruin. In 1734 its business was transferred from the Grocers' Hall to a newly erected building in Threadneedle Street. The Bank commenced to issue Bank Post Bills in 1738 (see BANK POST BILL). The Bank began to issue notes for £10 and £15 in 1759; previous to that year it would appear that the lowest amount of note issued was £20. In 1780 the Gordon Riots occurred, and for protection a company of Foot Guards did duty in the Bank, and ever since a picket of Grenadier or Coldstream Guards have mounted guard at the Bank each night. In 1793, or practically one hundred years after the Bank was founded, notes for £5 were first issued. The capital of the Bank had by that time increased to £11,642,400. In 1797, owing to the effects of the unusual demand for specie, an Order in Council was issued "that it is indispensably necessary for the public service, that the Directors of the Bank of England should forbear issuing any cash in payment, until the sense of Parliament can be taken on the subject." . . .

Notes for £1 and £2 appeared for the first time in 1797. In the same year Peel's "Restriction Act" was passed. It is entitled "An Act for continuing for a limited time the restriction contained in the minute of Council of the 26th of February, 1797, of payment of cash by the Bank."

In 1810, the Bullion Committee reported to the House of Commons upon the high price of bullion and the state of the circulating medium. In 1816, the Bank was

authorised to increase its capital to £14,553,000, at which amount it stood until public ownership in 1946. In 1819 the Bank Restriction Act was further continued till 1820. On 1st May, 1821, the Bank began to pay their notes in gold. In December, 1825, the Bank passed through a very severe time, and it appears that the credit of the Bank was saved by the finding of a box containing a quantity of one-pound notes. In 1825, at a time of general financial crisis, the Bank of England was authorised to open branches in the larger provincial towns and to issue notes therefrom. Accordingly, branches were opened at Gloucester, Manchester, and Swansea. At the present time, branches are established at Birmingham, Bristol, Law Courts (London), Leeds, Liverpool, Manchester, Newcastle-upon-Tyne, Plymouth, and Southampton. In 1826, notes under £5 were abolished; and the monopoly which the Bank had hitherto enjoyed was done away with except in London and within a radius of sixty-five miles thereof. In 1844, the Bank Charter Act was passed. It separated the Bank into two departments, the Issue Department and the Banking Department. The Bank's note issue was limited to £14,000,000 against securities, part of which was the debt due from the public; for any notes issued in excess of that amount gold coins, or gold or silver bullion must be deposited in the issue department. The net profit on any issue of notes against securities exceeding £14,000,000 was paid to the State. The Bank Act has been suspended on three occasions—in 1847, 1857, and 1866. On the outbreak of war with Germany in 1914, the Bank was authorised to suspend the Bank Act, but the authority was not acted upon. (See BANK CHARTER ACT.)

The Bank of England's advertised rate of discount, known as "Bank Rate," was the rate on which all money rates hinged. (See BANK RATE.)

For many years prior to public ownership, the Bank of England had assumed the functions of a Central Bank (*q.v.*), and in pursuance of this policy had gradually shed its private and commercial business, selling its Western Branch in Burlington Gardens, London, to the Royal Bank of Scotland.

The Bank kept the national reserve of bullion, and as all other banks throughout the country keep an account with the Bank of England, either directly or indirectly (by keeping an account with a London agent, which agent keeps an account there), the Bank of England occupied the unique position of being the holder of the ultimate banking reserve. In a time of panic all banks fell back upon the Bank of England for supplies of gold.

The Bank has charge of the Government accounts and manages the National Debt, paying the interest thereon. From the sums which are paid to the Bank for the management of the public debt, the Bank, by the Act of 1844, allowed the State £180,000 per annum for the privileges which it enjoyed. The remuneration for the management of the National Debt was fixed at an annual sum of £325 per £1,000,000 up to £500,000,000; £100 per £1,000,000 above £500,000,000, but the amount was not to be less than £160,000 per annum. The remuneration for the management of Exchequer Bonds was £100, and of Treasury Bills £200, for every £1,000,000 of such Bonds or Bills outstanding on the last day of the previous financial year (55 & 56 Vict. c. 48).

The following sections in the Bank Charter Act (7 & 8 Vict. c. 32) deal with the issue of notes by the Bank and with the privileges which it enjoys (but by the Currency and Bank Notes Act, 1928, Sections 2, 3, 5, and 9 were repealed. See CURRENCY AND BANK NOTES ACT, 1928)—

"1. The issue of promissory notes of the Governor and Company of the Bank of England payable on demand shall be separated and thenceforth kept wholly distinct from the general banking business of the said Governor and Company; and the business of and relating to such issue shall be thenceforth conducted and carried on by the said Governor and Company in a separate department to be called 'The Issue Department of the Bank of England,' subject to the rules and regulations hereinafter contained; and it shall be lawful for the court of directors of the said Governor and Company, if they shall think fit, to appoint a committee or committees of directors for the conduct and management of such issue department of the Bank of England, and from time to time to remove the members, and define, alter, and regulate the constitution and powers of such committee, as they shall think fit, subject to any by-laws, rules or regulations which may be made for that purpose: Provided nevertheless, that the said issue department shall always be kept separate and distinct from the banking department of the said Governor and Company.

"2. There shall be transferred, appropriated, and set apart by the said Governor and Company to the issue department of the

Bank of England securities to the value of fourteen million pounds, whereof the debt due by the public to the said Governor and Company shall be deemed a part; and there shall also at the same time be transferred, appropriated, and set apart by the said Governor and Company to the said issue department so much of the gold coin and gold and silver bullion then held by the Bank of England as shall not be required by the banking department thereof; and thereupon there shall be delivered out of the said issue department into the said banking department of the Bank of England such an amount of Bank of England notes as, together with the Bank of England notes then in circulation, shall be equal to the aggregate amount of the securities, coin, and bullion so transferred to the said issue department of the Bank of England: and the whole amount of Bank of England notes then in circulation, including those delivered to the banking department of the Bank of England as aforesaid, shall be deemed to be issued on the credit of such securities, coin, and bullion so appropriated and set apart to the said issue department; and from thenceforth it shall not be lawful for the said Governor and Company to increase the amount of securities for the time being in the said issue department, save as hereinafter is mentioned, but it shall be lawful for the said Governor and Company to diminish the amount of such securities, and again to increase the same to any sum not exceeding in the whole the sum of fourteen million pounds, and so from time to time as they shall see occasion; and from and after such transfer and appropriation to the said issue department as aforesaid it shall not be lawful for the said Governor and Company to issue Bank of England notes, either into the banking department of the Bank of England, or to any persons or person whatsoever, save in exchange for other Bank of England notes, or for gold coin or for gold or silver bullion received or purchased for the said issue department under the provisions of of this Act, or in exchange for securities acquired and taken in the said issue department under the provisions herein contained: Provided always, that it shall be lawful for the said Governor and Company in their banking department to issue all such Bank of England notes as they shall at any time receive from the said issue department or otherwise, in the same manner in all respects as such issue would be lawful to any other person or persons. (Repealed 1928.)

"3. It shall not be lawful for the Bank of England to retain in the issue department of the said Bank at any one time an amount of silver bullion exceeding one-fourth part of the gold coin and bullion at such time held by the Bank of England in the issue department. (Repealed 1928.)

"All persons shall be entitled to demand from the issue department of the Bank of England, Bank of England notes in exchange for gold bullion, at the rate of £3 17s. 9d. per ounce of standard gold: Provided always, that the said Governor and Company shall in all cases be entitled to require such gold bullion to be melted and assayed by persons approved by the said Governor and Company at the expense of the parties tendering such gold bullion.

"5. Provided, always, that if any banker who on the 6th day of May, 1844, was issuing his own bank notes shall cease to issue his own bank notes, it shall be lawful for Her Majesty in Council at any time after the cessation of such issue, upon the application of the said Governor and Company, to authorise and empower the said Governor and Company to increase the amount of securities in the said issue department beyond the total sum or value of fourteen million pounds, and thereupon to issue additional Bank of England notes to an amount not exceeding such increased amount of securities specified in such Order in Council, and so from time to time: Provided always, that such increased amount of securities specified in such Order in Council, shall in no case exceed the proportion of two-thirds the amount of bank notes which the banker so ceasing to issue may have been authorised to issue under the provisions of this Act; and every such Order in Council shall be published in the next succeeding *London Gazette*. (Repealed 1928.)

"7. The said Governor and Company of the Bank of England shall be released and discharged from the payment of any stamp duty, or composition in respect of stamp duty, upon or in respect of their promissory notes payable to bearer on demand; and all such notes shall be and continue free and wholly exempt from all liability to any stamp duty whatsoever.

"9. In case, under the provisions hereinbefore contained, the securities held in the said issue department of the Bank of England shall at any time be increased beyond the total amount of fourteen million pounds, then and in each and every year in which the same shall happen, and so long

as such increase shall continue, the said Governor and Company shall, in addition to the said annual sum of £180,000, make a further payment or allowance to the public, equal in amount to the net profit derived in the said issue department during the current year from such additional securities, after deducting the amount of the expenses occasioned by the additional issue during the same period, which expenses shall include the amount of any and every composition or payment to be made by the said Governor and Company to any banker in consideration of the discontinuance at any time hereafter of the issue of bank notes by such banker." (Repealed 1928.)

In 1844 there were 207 private banks and 72 joint stock banks authorised to issue their own notes in England. The last of these issues lapsed in 1921, representing a total of £8,631,647. In pursuance of the Act of 1844 two-thirds, that is, £5,754,431, of the lapsed amount may be added by Order in Council to the Bank of England's fiduciary issue of £14,000,000 as defined by that Act. By various Orders, as shown above, £5,750,000 of the two-thirds of the lapsed issues has been added to the Bank's issue, leaving a balance of £4,431.

On 22nd November, 1928, the currency note issue of the Treasury was transferred to the Bank of England, and the Bank was empowered to issue bank notes against securities to the amount of £260,000,000. This issue is called the fiduciary note issue. This amount could be increased by Treasury sanction, subject to ultimate parliamentary approval. (See FIDUCIARY ISSUE.) By the same Act "the Bank may issue bank notes for one pound and for ten shillings." (See CURRENCY AND BANK NOTES ACT, 1928.)

(See BANK NOTES, BANK OF ISSUE, BANK RETURN, CENTRAL BANK, FIDUCIARY ISSUE, NATIONAL DEBT.)

On 14th February, 1946, the Bank of England Act, 1946, was passed which brought the capital stock of the Bank into public ownership, subjected the Bank to public control, and made provision with respect to the relations between the Treasury, the Bank of England, and other banks.

The text of the Act and the consequential Charter is as follows—

Bank of England Act, 1946.

CHAPTER 27.

"An Act to bring the capital stock of the Bank of England into public ownership and bring the Bank under public control, to make provision with respect to the relations between the Treasury, the Bank of England and other banks, and for purposes connected with the matters aforesaid.

[14th February, 1946.]

"Be it enacted by the King's most Excellent Majesty, by and with the advice and consent of the Lords Spiritual and Temporal, and Commons, in this present Parliament assembled, and by the authority of the same, as follows—

Transfer of Bank Stock to Treasury.

"1.—(1) On the appointed day:

"(*a*) the whole of the existing capital stock of the Bank (hereinafter referred to as "Bank stock") shall, by virtue of this section, be transferred, free of all trusts, liabilities and incumbrances, to such person as the Treasury may by order nominate, to be held by that person on behalf of the Treasury;

"(*b*) the Treasury shall issue to the person who immediately before the appointed day is registered in the books of the Bank as the holder of any Bank stock, the equivalent amount of stock created by the Treasury for the purpose (hereinafter referred to as the 'Government stock').

"(2) The Government stock shall bear interest at the rate of three per cent per annum; and the equivalent amount of Government stock shall, in relation to any person, be taken to be such that the sum payable annually by way of interest thereon is equal to the average annual gross dividend declared during the period of twenty years immediately preceding the thirty-first day of March, nineteen hundred and forty-five, upon the amount of Bank stock of which that person was the registered holder immediately before the appointed day.

"(3) The Government stock may be redeemed at par by the Treasury on or at any time after the fifth day of April, nineteen hundred and sixty-six, after giving not less than three months' notice in the *London Gazette* of their intention to do so.

"(4) After the appointed day, no dividends on Bank stock shall be declared but in lieu of any such dividends the Bank shall pay to the Treasury, on every fifth day of April and of October, the sum of eight hundred and seventy-three thousand, one hundred and eighty pounds, or such less or greater sum as may from time to time be agreed upon between the Treasury and the Bank.

"(5) The incidental and supplemental provisions set out in the First Schedule to this Act shall have effect with respect to the Government stock and to the sums payable to the Treasury under the last foregoing subsection.

Court of Directors of the Bank.

"2.—(1) On the appointed day, all persons who are, immediately before that day, holding office as Governor, Deputy Governor or director of the Bank shall vacate their office, and on and after that day there shall be a Governor, a Deputy Governor and sixteen directors of the Bank, who shall be the court of directors.

"(2) The Governor, Deputy Governor and other members of the court of directors shall be appointed by His Majesty.

"(3) The provisions of the Second Schedule to this Act shall have effect as respects the tenure of office, qualifications and employment of members of the court of directors and meetings of the court.

Consequential Provisions as to Constitution and Powers of the Bank.

"3.—(1) So much of any enactment as limits the duration of the Bank as a body corporate shall cease to have effect.

"(2) As from the appointed day every member of the court of directors of the Bank shall be a member of the said body corporate, notwithstanding that he holds no Bank stock, and accordingly the members of the said body shall be the members for the time being of that court together with the person who for the time being holds the Bank stock on behalf of the Treasury.

"(3) As from the appointed day His Majesty may revoke all or any of the provisions of the charters of the Bank except in so far as they incorporate the Bank, and thereafter, subject to the provisions of this Act, the Bank shall be constituted and regulated in accordance with so much of the said charters as remains unrevoked and such other charters as may from time to time be granted by His Majesty and accepted on behalf of the Bank by the court of directors.

"(4) The enactments set out in the Third Schedule to this Act are hereby repealed as from the appointed day to the extent specified in the third column of that Schedule.

Treasury Directions to the Bank and Relations of the Bank with Other Banks.

"4.—(1) The Treasury may from time to time give such directions to the Bank as, after consultation with the Governor of the Bank, they think necessary in the public interest.

"(2) Subject to any such directions, the affairs of the Bank shall be managed by the court of directors in accordance with such provisions (if any) in that behalf as may be contained in any charter of the Bank for the time being in force and any byelaws made thereunder.

"(3) The Bank, if they think it necessary in the public interest, may request information from and make recommendations to bankers, and may, if so authorised by the Treasury, issue directions to any banker for the purpose of securing that effect is given to any such request or recommendation:

"Provided that—

"(*a*) no such request or recommendations shall be made with respect to the affairs of any particular customer of a banker; and

"(*b*) before authorising the issue of any such directions the Treasury shall give the banker concerned, or such person as appears to them to represent him, an opportunity of making representations with respect thereto.

"(4) If, at any time before any recommendations or directions are made or given in writing to a banker under the last foregoing subsection, the Treasury certify that it is necessary in the public interest that the recommendations or directions should be kept secret, and the certificate is transmitted to the banker together with the recommendations or directions, the recommendations or directions shall be deemed for the purpose of section two of the Official Secrets Act, 1911, as amended by any subsequent enactment, to be a document entrusted in confidence to the banker by a person holding office under His Majesty; and the provisions of the Official Secrets Acts, 1911 to 1939, shall apply accordingly.

"(5) Save as provided in the last foregoing subsection, nothing in the Official Secrets Acts, 1911 to 1939, shall apply to any request, recommendations or directions made or given to a banker under subsection (3) of this section.

"(6) In this section the expression 'banker' means any such person carrying on a banking undertaking as may be declared by order of the Treasury to be a banker for the purposes of this section.

"(7) Any order made under the last foregoing subsection may be varied or revoked by a subsequent order.

"(8) This section shall come into operation on the appointed day.

Interpretation.

"5. For the purposes of this Act—

"(*a*) the expression 'the Bank' means the Bank of England;

"(*b*) the appointed day shall be such day as the Treasury may by order appoint, not being later than three months from the date of the passing of this Act.

Short Title.

"6. This Act may be cited as the Bank of England Act, 1946."

FIRST SCHEDULE

Incidental and Supplemental Provisions as to the Government Stock and Sums Payable by the Bank to the Treasury.

"1. The principal of and interest on the Government stock, and any expenses incurred in connection with the issue or redemption thereof, shall be charged on and issued out of the Consolidated Fund of the United Kingdom or the growing produce thereof (hereafter in this Schedule referred to as 'the Consolidated Fund').

"2. There shall be paid to the Bank and the Bank of Ireland out of the Consolidated Fund such sums in respect of the management in any financial year of the Government stock as may be agreed upon between the Treasury and those Banks respectively.

"3. The interest on the Government stock shall be payable on the fifth day of April and the fifth day of October in each year.

"4. A full half year's interest on the Government stock shall be payable on whichever of the dates mentioned in the last foregoing paragraph occurs first after the appointed day, and shall be deemed to have accrued from day to day during the six months preceding that date.

"5. The interest on the Government stock shall be paid out of the permanent annual charge for the National Debt.

"6. Section forty-seven of the Finance Act, 1942 (which empowers the Treasury to make regulations as respects the transfer and registration of stock and registered bonds of the descriptions specified in Part I of the Eleventh Schedule to that Act), and any regulations made thereunder which are in force immediately before the appointed day, shall have effect as if the Government stock were included among the stocks mentioned in the said Part I and among the stocks to which the said regulations apply.

"7. Where immediately before the appointed day any dead person is registered in the books of the Bank as the holder or one of the joint holders of any Bank stock, any Government stock purporting to be issued to him, or to him and the other joint holders, shall be deemed to be duly issued to his personal

representatives, or to the survivors or the personal representatives of the last survivor of the joint holders, as the case may be; and, in the case of administrators, as well as in the case of executors, this paragraph shall have effect notwithstanding that there is no grant of representation to them until after the appointed day.

"8. The Government stock issued in substitution for any Bank stock shall be held in the same rights and on the same trusts and subject to the same powers, privileges, provisions, charges, restraints and liabilities as those in, on or subject to which the Bank stock was held immediately before the appointed day, and so as to give effect to and not revoke any deed, will, order, mandate, notice or other instrument or testamentary or other disposition disposing of or affecting the Bank stock, and every such instrument or disposition shall take effect with reference to the whole or a proportionate part, as the case may be, of the substituted Government stock.

"9. Trustees, executors and all other holders in any representative or fiduciary capacity of any Bank stock may hold, dispose of or otherwise deal with the Government stock issued in substitution therefor in all respects as they might have held, disposed of or otherwise dealt with the Bank stock.

"10. Paragraphs 3, 4 and 5 of the Second Schedule to the National Loans Act, 1939 (which applies certain enactments to securities issued under that Act), shall have effect as if references to securities issued under that Act included references to the Government stock.

"11. The Government stock shall be subject to the provisions of the National Debt Act, 1870, so far as is consistent with the tenor of this Act.

"12. The Treasury may, for the purpose of providing any sums required by them in order to redeem the Government stock in accordance with section one of this Act, raise money in any manner in which they are authorised to raise money under the National Loans Act, 1939, and any securities created and issued to raise money under this paragraph shall be deemed for all purposes to have been created and issued under that Act.

"13. The sums paid by the Bank to the Treasury in lieu of dividends on Bank stock shall be paid into the Exchequer, and issued out of the Consolidated Fund at such times as the Treasury may direct, and applied by the Treasury to the payment of any interest which would apart from this paragraph have fallen to be paid out of the permanent annual charge for the National Debt.

"14. In charging the profits and gains of the Bank for the purposes of income tax for any year of assessment, the sums paid by the Bank as aforesaid in that year shall be allowed as a deduction."

SECOND SCHEDULE

Supplemental Provisions as to Court of Directors.

"1. The term of office of the Governor and of the Deputy Governor shall be five years.

"2. The term of office of the directors shall be four years, and four of them shall retire each year on the anniversary of the appointed day: Provided that, of the directors appointed to take office on the appointed day, four shall be appointed to hold office until the first anniversary of that day and shall then retire, four shall be appointed to hold office until the second anniversary of that day and shall then retire, and four shall be appointed to hold office until the third anniversary of that day and shall then retire.

"3. A person who has held the office of Governor, Deputy Governor or director shall be eligible for reappointment to that office or for appointment to any other of those offices.

"4. A person shall be disqualified for holding the office of Governor, Deputy Governor or director if—

"(*a*) he is a Member of the Commons House of Parliament or a Minister of the

Crown, or a person serving in a Government Department in employment in respect of which remuneration is payable out of moneys provided by Parliament; or

"(*b*) he is an alien within the meaning of the British Nationality and Status of Aliens Acts, 1914 to 1943; or

"(*c*) he is subject to any disqualification which may be imposed by the charter of the Bank;

and a person shall vacate any such office if he becomes subject to any such disqualification.

"5. Where the office of a director is vacated under the foregoing paragraph, or by death or resignation, a person appointed to fill the vacancy shall hold office until the time when the person in whose place he was appointed would regularly have retired, and shall then retire.

"6. Not more than four of the directors may be employed to give their exclusive services to the Bank.

"7. The following provisions shall have effect as respects any meeting of the court of directors held on or after the appointed day but before a charter making provision for the matters dealt with by this paragraph has been granted and accepted under this Act—

"(*a*) the meeting may be called by the Governor or Deputy Governor in such manner as he may determine;

"(*b*) a quorum shall consist of not less than eight directors together with the Governor or Deputy Governor;

"(*c*) when a quorum is present the court may act notwithstanding that a vacancy exists among the members of the court."

THIRD SCHEDULE

ENACTMENTS REPEALED

Session and Chapter	Short Title	Extent of Repeal
5 & 6 W. & M. c. 20.	The Bank of England Act, 1694	Section twenty-five
8 & 9 Will. 3, c. 20 .	The Bank of England Act, 1696	Sections thirty, thirty-two, forty-five and forty-nine
7 Ann, c. 30 . .	The Bank of England Act, 1708	Sections sixty, sixty-one, seventy and seventy-seven
8 Ann, c. 1 . .	The Bank of England Act, 1709	The whole Act
3 Geo. 1, c. 8 .	The Bank of England Act, 1716	Section thirty-eight
15 Geo. 2, c. 13 .	The Bank of England Act, 1741	In section eight, the words from "disabled" to "Parliament, or be"
39 & 40 Geo. 3, c. 28	The Bank of England Act, 1800	In section thirteen the words from "and also subject" to the end of the section; in section fifteen, the words from "subject to redemption" to "and not otherwise"; section sixteen
3 & 4 Will. 4, c. 98 .	The Bank of England Act, 1833	In section one the words from "for the period" to the end of the section; in section fourteen the words from "subject nevertheless" to the end of the section
7 & 8 Vict. c. 32 .	The Bank Charter Act, 1844	Section twenty-seven except in so far as it authorises the redemption of the debt due from the public to the Bank of England
33 & 34 Vict. c. 71 .	The National Debt Act, 1870	Section seventy-two
55 & 56 Vict. c. 48 .	The Bank Act, 1892	Subsection (1) of section seven

BANK OF ENGLAND CHARTER

Dated 1st March, 1946

"George the Sixth, by the Grace of God, of Great Britain, Ireland and the British Dominions beyond the Seas, King, Defender of the Faith, Emperor of India:

"To all to whom these Presents shall come, Greeting!

"Whereas by a Charter granted by Their Majesties King William and Queen Mary by Letters Patent under the Great Seal in pursuance of the Bank of England Act 1694 and dated the twenty-seventh day of July in the sixth year of their reign the Governor and Company of the Bank of England (hereinafter called "the Bank of England") were duly incorporated with perpetual succession and a common seal and such rights, powers and privileges as are therein described:

"And whereas by a Supplemental Charter granted by Her Majesty Queen Victoria by Letters Patent under the Great Seal in pursuance of the Bank Act, 1892 and dated the nineteenth day of August in the sixtieth year of Her reign the internal affairs of the Bank of England were further regulated:

"And whereas the Bank of England Act 1946 by section one enacted that on a day to be appointed (hereinafter called "the appointed day") the whole of the existing capital stock of the Bank of England should be transferred to such person as the Treasury might by order nominate: and by section two enacted that on and after the appointed day there should be a Governor a Deputy Governor and sixteen Directors of the Bank of England who should be the Court of Directors and should be appointed by Us Our Heirs and Successors and that the provisions of the Second Schedule to that Act should have effect as respects the tenure of office qualifications and employment of members of the Court of Directors: and by section three enacted that as from the appointed day the members of the said body corporate should be the members for the time being of the Court of Directors together with the person who for the time being should hold the capital stock of the Bank of England on behalf of the Treasury and by section five enacted that the appointed day should be such day as the Treasury might by order appoint:

"And whereas the Bank of England Act 1946 by section three further enacted that as from the appointed day all or any of the provisions of the Charters of the Bank of England might be revoked except in so far as they incorporate the Bank of England and that thereafter, subject to the provisions of that Act, the Bank of England should be constituted and regulated in accordance with so much of the said Charters as remained unrevoked and such other Charters as might from time to time be granted by Us Our Heirs and Successors and accepted on behalf of the Bank of England by the Court of Directors:

"And whereas by the Bank of England (Appointed Day) Order 1946 the Treasury have appointed the first day of March nineteen hundred and forty-six as the appointed day for the purposes of the Bank of England Act 1946:

"And whereas it is Our pleasure in pursuance of section three of the Bank of England Act 1946 to revoke the existing Charters of the Bank of England except in so far as they incorporate the Bank of England, constitute its capital stock, authorise it to have a common seal, to hold land and other property as therein mentioned and to sue and be sued and in place thereof to grant such new Charter as is herein set forth:

"Now therefore know ye that We, taking the premises into Our consideration and of Our especial grace, certain knowledge, and mere motion do, in pursuance of the Bank of England Act 1946 and of all other powers enabling Us in that behalf, by these Presents for Us Our Heirs and Successors give, grant, ordain and declare as follows, that is to say:

Revocation of Charters in part.

"1. As from the appointed day the Charter of the Bank of England dated the 27th day of July 1694 (except in so far as it incorporates the Bank of England, constitutes its capital stock and authorises it to have a common seal, to hold land and other property as therein mentioned and to sue and be sued) and the Supplemental Charter of the Bank of England dated the 19th day of August 1896 shall be and the same are hereby revoked.

Stock to Vest in Nominee of Treasury.

"2. If at any time the Treasury direct that the capital stock of the Bank of England and any part thereof shall be transferred from the person nominated by them under section one of the Bank of England Act 1946 to any other person nominated by them the said stock or such part thereof shall without

any instrument of transfer vest in the person so nominated by them to be held by him on behalf of the Treasury accordingly.

Powers of the Court of Directors.

"3. The Court of Directors may and shall choose and appoint and remove officers servants and agents and determine their remuneration and conditions of service and generally in all matters do whatsoever they may judge necessary for the well ordering and managing of the Bank of England and the affairs thereof.

Power to Make By-Laws.

"4. The By-Laws of the Bank of England heretofore made under the said Charter and Supplemental Charter ceasing to have effect as from the appointed day, the Court of Directors shall have power hereunder to make such By-Laws as appear to them to be required for the good order and management of the Bank of England and from time to time to repeal alter or supplement any By-Laws so made: provided always that the said By-Laws and any repeal alteration or supplement thereof shall not be repugnant to the laws or statutes of this Our Realm or to the provisions of the charters of the Bank of England from time to time in force.

How the Court of Directors may act.

"5. The Court of Directors may act notwithstanding that a vacancy or vacancies exist among the members of the Court and shall have power to act by sub-committees and to delegate such duties and powers as they think fit from time to time, to such sub-committees and to any of their own number and to the officers and servants and agents of the Bank. The Court shall meet once in every week at the least but the Governor (or in his absence the Deputy Governor) may summon a meeting at any time on giving such notice as in his judgment the circumstances may require.

Meetings of the Court of Directors.

"6. At a meeting of the Court of Directors the proceedings shall be regulated as follows:

"(1) The quorum shall consist of not less than nine members.

"(2) The Governor or in his absence the Deputy Governor shall take the chair. If either the Directors present are satisfied that neither the Governor nor Deputy Governor will be present or the Governor and Deputy Governor are absent for fifteen minutes after the time appointed for the meeting, the Directors present may choose one of their own number to be Chairman for that meeting and the transactions of that meeting shall be as valid and effectual for all purposes as if the Governor or Deputy Governor had been present.

"(3) The Governor or in his absence the Deputy Governor or in the absence of both the Governor and Deputy Governor the Chairman chosen for that meeting shall not have any vote save where there shall be an equality of votes.

"(4) The Minutes of all orders, resolutions and transactions of the Court of Directors shall be taken by the Secretary or his Deputy or Assistant as the case may be and written in a book to be kept for that purpose.

Declarations to be Made.

"7. No person appointed as Governor, Deputy Governor or Director of the Bank of England shall be capable of executing or acting in the office to which he may have been appointed until he shall have made the declaration set out in that behalf in the Schedule to these presents. Which declaration may and shall be made before any one of the Lord High Chancellor of

Great Britain or the Chancellor of the Exchequer or the Lord Chief Justice of Us Our Heirs and Successors or the Governor or Deputy Governor of the Bank of England or before any preceding Governor or any preceding Deputy Governor. A Governor, Deputy Governor or Director who at the date of his appointment is absent from the United Kingdom may make the declaration required by these presents before the representative of Us Our Heirs and Successors in any foreign state, before the United Kingdom High Commissioner in any of Our Dominions or before the Governor in any of Our Crown Colonies.

When Offices to be Vacated.

"8. Without prejudice to the provisions of paragraph 4 of the Second Schedule to the Bank of England Act 1946, a Governor Deputy Governor or Director of the Bank of England shall be disqualified for holding and shall vacate his office

"(*a*) If he be found lunatic or become of unsound mind;

"(*b*) If he become bankrupt or suspend payment or compound with his creditors;

"(*c*) If he be convicted of an offence and the Court with the approval of Our Chancellor of the Exchequer resolve that his office be vacated;

"(*d*) If he absent himself from Meetings of the Court of Directors continuously for six months without the consent of the Court and the Court with the approval of Our Chancellor of the Exchequer resolve that his office be vacated; or

"(*e*) If by notice in writing to the Court (which notice shall forthwith be communicated by the Court to Our Chancellor of the Exchequer) he resign his office.

Interest of Members of the Court of Directors to be Disclosed.

"9. In all cases where the Governor, Deputy Governor and Directors or any of them shall have any interest direct or indirect in any dealing or business with the Bank of England such Governor, Deputy Governor or Director shall at the time of such dealing or business being negotiated or transacted declare and disclose to the Court of Directors his interest therein and shall have no vote relating thereto: provided that a member of the Court shall not be deemed to have an interest in any dealing or business by reason only of his being the beneficial owner of not more than one per cent of the share capital of a company interested in such dealing or business.

Those Concerned in Debates to Withdraw.

"10. Where any question shall at any time arise at a meeting of the Court of Directors touching or concerning any member of the Court such member shall have no vote relating thereto but shall withdraw and be absent during the debate of any matter in which he is concerned.

Exclusive Services of Members of the Court of Directors.

"11.—(1) The Governor and the Deputy Governor shall render their exclusive services to the Bank of England.

"(2) The Court of Directors may from time to time engage the exclusive services of Directors, in number not exceeding four at any time, for a period not exceeding the unexpired portion of their respective terms of office. Such Directors shall be called and known by the name of Executive Directors, or by such other name as the Court may from time to time determine.

Remuneration of Members of the Court of Directors.

"12.—(1) The Governor, Deputy Governor and Directors shall in respect of their services on the Court of Directors receive fees at the same rate as the fees which were payable to them respectively immediately before the date of these presents for the same services that is to say the Governor at the rate of Two Thousand Pounds a year the

Deputy Governor at the rate of One Thousand Five Hundred Pounds a year and each Director at the rate of Five Hundred Pounds a year.

"(2) The Governor and Deputy Governor and any Director rendering exclusive services to the Bank of England may in respect of their exclusive services receive remuneration at such rates as the Court of Directors may from time to time determine in addition to their fees for their services on the Court and the Court may pay or create and maintain a fund for the payment of pensions or capital grants to members or former members of the Court who shall have rendered such exclusive services.

Custody and Use of the Seal.

"13. The Seal of the Corporation shall be carefully kept under three locks, the three keys whereof shall be severally kept by such three members of the Court of Directors as the Court shall from time to time empower to keep the same. The said Seal shall not be affixed to any instrument whatsocver but by an Order of the Court of Directors for that purpose first had and obtained and in the presence of three or more members of the Court for the time being. The affixing of the Seal shall be attested by the signature of any three of the members of the Court so present.

"IN WITNESS whereof We have caused these Our Letters to be made Patent.

"WITNESS Ourself at Westminster the first day of March in the tenth year of Our Reign.

"By WARRANT under The King's Sign Manual.

NAPIER."

SCHEDULE

Forms of Declaration

Form of Declaration by the Governor or Deputy Governor.

I, A B, being appointed to the office of Governor (Deputy Governor) of the Corporation of the Governor and Company of the Bank of England do solemnly and sincerely declare that I will to the utmost of my power, by all lawful ways and means, endeavour to support and maintain the said Corporation and the liberties and privileges thereof: and in the execution of the said Office I will faithfully and honestly demean myself according to the best of my skill and understanding.

Form of Declaration by a Director.

I, A B, being appointed to the office of a Director of the Corporation of the Governor and Company of the Bank of England do solemnly and sincerely declare that in the said office I will be indifferent and equal to all manner of persons: and I will give my best advice and assistance for the support and good government of the said Corporation: and in the execution of the said Office I will faithfully and honestly demean myself according to the best of my skill and understanding.

(L.S.)

BANK OF ENGLAND NOTES. The Bank of England is a bank of issue, and may issue notes in England and Wales. The Bank is separated into two departments, the Issue Department and the Banking Department. By the Currency and Bank Notes Act, 1928, the currency note issue of the Treasury was transferred to the Bank of England, the Bank was empowered to issue bank notes for £1 and for 10s., such notes to be legal tender in Scotland and Northern Ireland as in England, and the Bank's note issue against securities (the "fiduciary note issue") was fixed at £260,000,000. (See CURRENCY AND BANK NOTES ACT, 1928, FIDUCIARY ISSUE.)

By the Gold Standard Act, 1925, until otherwise provided by Proclamation, the Bank of England shall not be bound to pay any note of the Bank in coin. (See GOLD STANDARD ACT, 1925.)

Bank of England notes may be signed by machinery instead of being written (16 & 17 Vict. c. 2, Section 1).

Notes of the Bank of England are not subject to any stamp duty. They are issued for 10s., £1, and £5. Until 30th April, 1945, notes for £10, £20, £50, £100, £200, £500, and £1,000 were also in circulation, but on that date they were withdrawn in connection with the Government's policy to stamp out "black market" operations and to check income tax evasion. These high value notes are now no longer legal tender, but are still repayable at the Bank of England. Owing to the prevalence of forged £5 notes in Europe, at the close of the second German

6—(B.1535)

war, a new type of note of better protective character was issued in October, 1945.

As from 1st March, 1946, the old type of £5 note was called in and from that date was no longer legal tender, although encashable at the Bank of England. By the Act of 1928, any person who prints or impresses on any bank note any words, letters, or figures shall be liable to a penalty not exceeding £1. (Section 12.) This section does not affect the negotiability of any such note. The only person who is liable to the penalty is the person who defaced the note.

The Bank of England does not object to the code stamp and serial number of a bank being placed on the back of notes for £5, but they must not be placed on the face of the notes.

On the £1 and 10s. notes there is a special "window" water-mark in the centre of the lower half of the notes representing in profile the head of Britannia, whose figure, adopted in 1694 as the seal of the Bank, has appeared on the Bank's notes from the earliest days. The head is surmounted by a helmet of classic type. The Bank's "wave line" water-mark appears round the edges of the notes.

Where notes of the Bank of England issued more than forty years ago (in the case of notes for £1 or 10s., twenty years, see the 1928 Act) have not been presented for payment, the Bank of England is empowered by the Bank Act, 1892, Section 6, to write off the amount, or any proportion of it, of such notes from the total amount issued by the issue department, and the Bank Charter Act, 1844, is to apply as if the amount so written off had not been issued, provided that—

"(*a*) A return of the amount of notes so written off shall be forthwith sent to the Treasury and laid by them before Parliament; and

"(*b*) This Section shall not affect the liability of the Bank to pay any note included in the amount so written off, and if it is presented for payment the amount shall either be paid out of the bank notes, gold coin, or bullion in the banking department; or, if it is exchanged for gold coin or bullion in the issue department, or for a note issued from the issue department, a corresponding amount of gold coin or bullion shall be transferred from the banking department and appropriated to the issue department."

Lord Mansfield (in *Miller* v. *Race*, 1758, 1 Burr. 452) said: "Bank notes are not goods, nor securities, nor documents for debts, nor are they so esteemed, but are treated as money, as cash, in the ordinary course and transaction of business by the general consent of mankind."

A material part of a Bank of England note, and of all bank notes, is the number. If a note is lost or stolen, the number often enables the loser who has kept a record of it to trace the note. The fact of notes being numbered, and therefore traceable, no doubt often tends to prevent them being stolen.

The numbers also are necessary to the Bank in order that a correct register may be kept of all notes issued, and the date of issue, and that, when withdrawn from circulation, each note may be written off in the register as having been paid. (See BANK NOTES, BANK OF ENGLAND.)

In *Suffell* v. *Bank of England* (1882), 9 Q.B.D. 555, the numbers upon certain notes had been fraudulently altered before they had been *bona fide* purchased by the plaintiff for value. It was held that, although the alteration did not vary the contract, it was material in the sense of altering the notes in an essential part, and that therefore the notes were vitiated so that the plaintiff could not recover.

In *Hongkong and Shanghai Banking Corporation* v. *Lo Lee Shi* (1928), 44 T.L.R. 233, one of its notes had been accidentally mutilated and the number was missing. With regard to the liability of the bank to pay the note from which the number was missing, the Judicial Committee of the Privy Council held that there was nothing to destroy the liability of the bank upon a document which was admitted to be one of its notes. They added, "it is not possible in this case to lay down any general principles of law; they desire their judgment to be limited to this point, that in the special circumstances of this case it is possible, by means of the fragments of the document, assisted by oral evidence, to establish a claim against the bank for the $500 due upon the note." In this case the number had been accidentally defaced, and it was pointed out that the case of *Suffell* v. *Bank of England* was different, as in that case the notes had been intentionally and fraudulently altered.

Mutilated bank notes for £1 and 10s. are referred to under MUTILATED NOTES.

The Bank of England will register a "stop" in respect of a lost or stolen note of £5 denomination and upwards on payment of a registration fee of half a crown.

This procedure only guarantees that the Bank will require the presenter of the note to justify his title to payment, for the Bank is bound by the terms of the Bank Charter Act, 1844, to honour its notes presented by the public.

Where a note has been destroyed, the Bank will issue a fresh one after a year on satisfactory proof of destruction and against an approved indemnity. Where the destruction cannot be proved, five years must elapse before a fresh note will be issued against an indemnity.

BANK OF ISSUE. A bank which issues its own notes payable to bearer on demand.

Principally through amalgamations, the banks of issue in England have disappeared, leaving only the Bank of England.

The issue of bank notes in Ireland was regulated by the Act of 1845 (8 & 9 Vict. c. 37). A banker in Ireland was prohibited from issuing notes in excess of the amount certified by the Commissioners of Stamps and Taxes (that is, the average amount of notes in circulation for one year prior to 1st May, 1845) except against the monthly average amount of gold and silver held by such banker at the head office and four principal places of issue.

The issue of bank notes in Scotland is regulated by the Act of 1845 (8 & 9 Vict. c. 38). Bankers issuing notes on 6th May, 1844, were empowered to continue to issue them to the extent of the amount certified by the Commissioners (that is, the average amount of notes in circulation for one year prior to the passing of the Act) and the monthly average of gold and silver coin held by such banker at the head office or principal place of issue.

In each of those Acts of 1845 it is provided that the silver against which notes may be issued must not exceed one-fourth part of the gold coin; that notes for one pound and upwards may be issued; and that Bank of England notes, though they may circulate in Ireland and Scotland, are not a legal tender in those countries.

By the Currency and Bank Notes Act, 1928, for the purpose of any enactment which, in the case of a bank in Scotland or Northern Ireland, limits by reference to the amount of gold and silver coin held by any such bank the amount of notes which that bank may have in circulation, Bank of England notes held by that bank, or by the Bank of England on account of that bank, shall be treated as being gold coin held by that bank. (Section 9 (1).)

A bank in Scotland or Northern Ireland may hold the coin and Bank of England notes, by reference to which the amount of notes which it is entitled to have in circulation is limited, at such of its offices in Scotland or Northern Ireland respectively, not exceeding two, as may from time to time be approved by the Treasury. (Section 9 (2).)

By Section 1 of the same Act, Bank of England notes for £1 and for 10s. may be put into circulation in Scotland and Northern Ireland, and shall be current and legal tender there as in England.

By the Bankers (Northern Ireland) Act, 1928—

Whereas under the Act of 1845, the aggregate amount of notes which banks in Ireland are authorised to issue in excess of the amount issued against gold and silver was fixed at £6,354,494 (that is the "fiduciary note issue") and

Whereas by the Currency Act, 1927, of the Irish Free State provision is made for the issue within the Irish Free State of currency and bank notes, and the issue in the Irish Free State of bank notes other than those authorised by that Act is prohibited; and

Whereas in consequence of the passing of the said Currency Act, 1927, it is necessary that the aggregate amount of the fiduciary note issue in Northern Ireland should be reduced; and

Whereas the banks in Northern Ireland which are entitled to fiduciary note issues have agreed with the Treasury that the aggregate fiduciary note issues in Northern Ireland should be reduced to £1,634,000 [the Act apportions that amount amongst the six banks of issue in Northern Ireland];

it was enacted that the Act of 1845 shall, in its application to Northern Ireland, have effect as if that amount (£1,634,000) had been the amount authorised under the Act of 1845. (Section 1 (1).) The notes which any such bank is by the Act of 1845, as amended by this Act, authorised to issue shall be in addition to any bank notes which the bank is by any law for the time being in force in the Irish Free State, authorised to issue within the Irish Free State. (Section 1, (2).) It shall not be lawful for a banker in Northern Ireland to pay out or put in circulation any bank or other notes forming part of the currency of any country outside

the United Kingdom, except as the Treasury may by any general or special licence authorise. (Section 2.)

For the purposes of the Act of 1845 which relate to the issue of notes against gold and silver coin, there shall not be included any gold or silver coin held by a bank at any office outside the United Kingdom. (Section 3.)

A bank in Scotland does not lose its right to issue notes by opening an office in London.

By the Currency and Bank Notes Act, 1914, Section 4, notes of banks of issue in Scotland or Ireland were made legal tender until revoked by Royal Proclamation. This Section was, by Proclamation, revoked as from 1st January 1920.

The authorised issues are as follows—

BANK OF ENGLAND.	
Issue authorised against securities	£260,000,000
ENGLAND.	
Joint Stock Banks—	
Through amalgamations, the last issue disappeared in 1919.	
Private Banks—	
Through amalgamations, the last issue disappeared in 1921.	
SCOTLAND—	
Eight Joint Stock Banks . . .	2,676,350
NORTHERN IRELAND—	
Six Joint Stock Banks . . .	1,634,000
Total . . .	£264,310,350

(But see CURRENCY AND BANK NOTES ACT, 1928, Section 8.)

To show how greatly the authorised issues of the English country banks had diminished, "in March, 1858, the fixed issues of the issuing private banks, 153 in number, amounted to £4,432,790, and those of the 63 issuing joint stock banks to £3,303,357." (Hutchison's *Practice of Banking*, Vol. ii, p. 349.) The authorised issue of the banks in Scotland in that year was £3,087,209, or only £410,000 more than at present. (See BANK NOTES.)

BANK POST BILL. Bank Post Bills were first issued by the Bank of England in 1738, payable at seven or sixty days after sight, without grace. They were issued to customers of the Bank of England free of stamp duty and commission and were originally used as a precaution against robbery in transit, as they could be stopped before their due date. For a long time past their issue had been confined to seven-day bills and, as such, they appeared on the liability side of the Weekly Return (Banking Department). They finally ceased to be issued in September, 1934.

BANK PREMISES. The premises of a banking company are frequently written down much below what may be regarded as their market value. In the case of the Bank of England its valuable property does not appear at all in the balance sheet.

Where the property is leasehold, the amount at which it stands in the books is reduced annually from profits by such an amount as will clear off the amount by the expiration of the lease. For example, if the outlay upon the land and buildings has been £2,000 and the term of the lease is fifty years, a sum of £40 should be set aside out of profits each year so that by the end of the term the balance at the debit of the premises account will be cleared off.

BANK PREMISES REDEMPTION FUND. The name of the account to which are credited, yearly or half-yearly, any sums which are set aside out of profits for the purpose of reducing, when necessary, the balance at the debit of bank premises account.

BANK RATE. The Bank Rate is the advertised minimum rate at which the Bank of England will discount approved bills of exchange (of not more than three months' currency), but the rate which was actually charged to customers who kept their accounts with the Bank was the current market rate, which was, as a rule, lower than the Bank Rate. The Bank Rate is fixed by the Directors at their weekly meeting each Thursday, though alterations are sometimes made, when necessary, upon other days. The Rate was regulated according to the supply of money, on the one hand, and the demand for it, on the other. When the Bank reserve got too low, the Directors raised the Rate, but when the Directors found that they were in a position to increase their loans or discounts, the Rate was lowered. The reserve in the banking department was the most important cause of the rise or fall of the Bank Rate. A small reserve indicated a high Rate, and a large reserve a low Rate. When gold standards were in operation, a rise in the Bank Rate tended to attract gold to this country; a fall in the Rate encouraged gold to go abroad. The Bank Rate was, therefore, of the utmost importance in protecting the national reserve of gold. The rates, whether for loans, discounts, or deposits, of all the other banks in the country were regulated more or less, according to the Bank Rate.

The Bank Rate has now (1954) assumed some of its former significance as a weapon in the hands of the Government to check

inflation and stimulate demand as and when necessary.

The following table shows the changes in the Bank of England minimum rate of discount and the yearly average from 1829—

Date.	Per cent.	Yearly Aver. £ s. d.
1829. July 5	4	4 0 0
1830.	4	4 0 0
1831.	4	4 0 0
1832.	4	4 0 0
1833.	4	4 0 0
1834.	4	4 0 0
1835.	4	4 0 0
1836. July 21	4½	
Sept. 1	5	4 7 9
1837.	5	5 0 0
1838. Feb. 15	4	4 2 6
1839. May 16	5	
June 20	5½	
Aug. 1	6	5 2 0
1840. Jan. 23	5	5 1 3
1841.	5	5 0 0
1842. April 7	4	4 5 4
1843.	4	4 0 0
1844. Sept. 5	2½ (Bills) 3 (Notes)	3 10 4
1845. Mar. 13	2½	
Oct. 16	3	
Nov. 6	3½	2 13 7
1846. Aug. 27	3	3 6 6
1847. Jan. 14	3½	
,, 21	4	
April 8	5	
Aug. 2	6	
,, 5	5½	
Sept. 30	6	
Oct. 4	6½	
,, 25	8 (Bank Charter Act suspended)	
Nov. 22	7	
Dec. 2	6	
,, 23	5	4 2
1848. Jan. 27	4	
June 15	3½	
Nov. 22	3	3 14 11
1849. ,, 22	2½	2 19 0
1850. Dec. 26	3	2 10 1
1851.	3	3 0 0
1852. Jan. 1	2½	
April 22	2	2 3 0
1853. Jan. 6	2½	
,, 20	3	
June 2	3½	
Sept. 1	4	
,, 15	4½	
,, 29	5	3 13 11
1854. May 11	5½	
Aug. 3	5	5 2 3
1855. April 5	4½	
May 3	4	
June 15	3½	
Sept. 6	4	
,, 13	4½	
,, 27	5	
Oct. 4	5½	
,, 18	7	4 17 9
1856. May 22	6	
,, 29	5	
June 26	4½	
Oct. 1	5	
1856. Oct. 6	7	
Dec. 4	6½	
,, 18	6	6 1 3
1857. April 2	6½	
June 18	6	
July 16	5½	
Oct. 8	6	
,, 12	7	
,, 19	8	
Nov. 5	9	
,, 9	10 (Bank Charter Act suspended Nov. 12)	
Dec. 24	8	6 12 11
1858. Jan. 7	6	
,, 14	5	
,, 28	4	
Feb. 4	3½	
,, 11	3	
Dec. 9	2½	3 4 7
1859. April 28	3½	
May 5	4½	
June 2	3½	
,, 9	3	
July 14	2½	2 14 8
1860. Jan. 19	3	
,, 31	4	
Mar. 29	4½	
April 12	5	
May 10	4½	
,, 24	4	
Nov. 8	4½	
,, 13	5	
,, 15	6	
,, 29	5	
Dec. 31	6	4 3 7
1861. Jan. 7	7	
Feb. 14	8	
Mar. 21	7	
April 4	6	
,, 11	5	
May 16	6	
Aug. 1	5	
,, 15	4½	
,, 29	4	
Sept. 19	3½	
Nov. 7	3	5 4 11
1862. Jan. 9	2½	
May 22	3	
July 10	2½	
,, 24	2	
Oct. 30	3	2 10 6
1863. Jan. 15	4	
,, 28	5	
Feb. 19	4	
April 23	3½	
,, 30	3	
May 16	3½	
,, 21	4	
1863. Nov. 2	5	
,, 5	6	
Dec. 2	7	
,, 3	8	
,, 24	7	4 8 2
1864. Jan. 20	8	
Feb. 11	7	
,, 25	6	
April 16	7	
May 2	8	
,, 5	9	
,, 19	8	
,, 26	7	

	Date.	Per cent.	Yearly Aver. £ s. d.
1864.	June 16	6	
	July 25	7	
	Aug. 4	8	
	Sept. 8	9	
	Nov. 10	8	
	,, 24	7	
	Dec. 15	6	7 7 0
1865.	Jan. 12	5½	
	,, 26	5	
	Mar. 2	4½	
	,, 30	4	
	May 4	4½	
	,, 25	4	
	June 1	3½	
	,, 15	3	
	July 27	3½	
	Aug. 3	4	
	Sept. 28	4½	
	Oct. 2	5	
	,, 5	6	
	,, 7	7	
	Nov. 23	6	
	Dec. 28	7	4 15 6
1866.	Jan. 4	8	
	Feb. 22	7	
	Mar. 15	6	
	May 3	7	
	,, 8	8	
	,, 11	9	
	,, 12	10 (Bank Charter Act suspended)	
	Aug. 16	8	
	,, 23	7	
	,, 30	6	
	Sept. 6	5	
	,, 27	4½	
	Nov. 8	4	
	Dec. 20	3½	6 18 11
1867.	Feb. 7	3	
	May 30	2½	
	July 25	2	2 10 9
1868.	Nov. 19	2½	
	Dec. 3	3	2 1 11
1869.	April 1	4	
	May 6	4½	
	June 10	4	
	,, 24	3½	
	July 15	3	
	Aug. 19	2½	
	Nov. 4	3	3 4 2
1870.	July 21	3½	
	,, 23	4	
	,, 28	5	
	Aug. 4	6	
	,, 11	5½	
	,, 18	4½	
	,, 25	4	
	Sept. 1	3½	
	,, 15	3	
	,, 29	2½	3 1 11
1871.	Mar. 2	3	
	April 13	2½	
	June 15	2½	
	July 13	2	
	Sept. 21	3	
	,, 28	4	
	Oct. 7	5	
	Nov. 16	4	
	,, 30	3½	
	Dec. 14	3	2 17 8
1872.	April 4	3½	
	,, 11	4	
	May 9	5	
1872.	May 30	4	
	June 13	3½	
	,, 20	3	
	July 18	3½	
	Sept. 18	4	
	,, 26	4½	
	Oct. 3	5	
	,, 10	6	
	Nov. 9	7	
	,, 28	6	
	Dec. 12	5	4 1 11
1873.	Jan. 9	4½	
	,, 23	4	
	,, 30	3½	
	Mar. 26	4	
	May 7	4½	
	,, 10	5	
	,, 17	6	
	June 4	7	
	,, 12	6	
	July 10	5	
	,, 17	4½	
	,, 24	4	
	,, 31	3½	
	Aug. 21	3	
	Sept. 25	4	
	,, 29	5	
	Oct. 14	6	
	,, 18	7	
	Nov. 1	8	
	,, 7	9	
	,, 20	8	
	,, 27	6	
	Dec. 4	5	
	,, 11	4½	4 15 10
1874.	Jan. 8	4	
	,, 15	3½	
	April 30	4	
	May 28	3½	
	June 4	3	
	,, 18	2½	
	July 30	3	
	Aug. 6	4	
	,, 20	3½	
	,, 27	3	
	Oct. 15	4	
	Nov. 16	5	
	,, 30	6	3 13 10
1875.	Jan. 7	5	
	,, 14	4	
	,, 28	3	
	Feb. 18	3½	
	July 8	3	
	,, 29	2½	
	Aug. 12	2	
	Oct. 7	2½	
	,, 14	3½	
	,, 21	4	
	Nov. 18	3	
	Dec. 30	4	3 4 8
1876.	Jan. 6	5	
	Jan. 27	4	
	Mar. 23	3½	
	April 6	3	
	,, 20	2	2 12 2
1877.	May 3	3	
	July 5	2½	
	,, 12	2	
	Aug. 28	3	
	Oct. 4	4	
	,, 11	5	
	Nov. 29	4	2 18 0
1878.	Jan. 10	3	
	,, 31	2	

	Date.	Per cent.	Yearly Aver. £ s. d.
1878.	Mar. 28	3	
	May 30	2½	
	June 27	3	
	July 4	3½	
	Aug. 1	4	
	,, 12	5	
	Oct. 14	6	
	Nov. 21	5	3 15 7
1879.	Jan. 16	4	
	,, 30	3	
	Mar. 13	2½	
	April 10	2	
	Nov. 6	3	2 10 4
1880.	June 17	2½	
	Dec. 9	3	2 15 4
1881.	Jan. 13	3½	
	Feb. 17	3	
	April 28	2½	
	Aug. 18	3	
	,, 25	4	
	Oct. 6	5	3 10 0
1882.	Jan. 30	6	
	Feb. 23	5	
	Mar. 9	4	
	23	3	
	,,		
	Aug. 17	4	
	Sept. 14	5	4 2 0
1883.	Jan. 25	4	
	Feb. 15	3½	
	Mar. 1	3	
	May 10	4	
	Sept. 13	3½	
	,, 27	3	3 11 4
1884.	Feb. 7	3½	
	Mar. 13	3	
	April 3	2½	
	June 19	2	
	Oct. 9	3	
	,, 30	4	
	Nov. 6	5	2 19 1
1885.	Jan. 29	4	
	Mar. 19	3½	
	May 7	3	
	,, 14	2½	
	,, 28	2	
	Nov. 12	3	
	Dec. 17	4	2 17 7
1886.	Jan. 21	3	
	Feb. 18	2	
	May 6	3	
	June 10	2½	
	Aug. 26	3½	
	Oct. 21	4	
	Dec. 16	5	3 1 0
1887.	Feb. 3	4	
	Mar. 10	3½	
	,, 24	3	
	April 14	2½	
	,, 28	2	
	Aug. 4	3	
	Sept. 1	4	3 7 0
1888.	Jan. 12	3½	
	,, 19	3	
	Feb. 16	2½	
	Mar. 15	2	
	May 10	3	
	June 7	2½	
	Aug. 9	3	
	Sept. 13	4	
	Oct. 4	5	3 5 11
1889.	Jan. 10	4	
	,, 24	3½	
	,, 31	3	
	April 18	2½	
1889.	Aug. 8	3	
	,, 29	4	
	Sept. 26	5	
	Dec. 30	6	3 10 11
1890.	Feb. 20	5	
	Mar. 6	4½	
	,, 13	4	
	April 10	3½	
	,, 17	3	
	June 26	4	
	July 31	5	
	Aug. 21	4	
	Sept. 25	5	
	Nov. 7	6	
	Dec. 4	5	4 10 5
1891.	Jan. 8	4	
	,, 22	3½	
	,, 29	3	
	April 16	3½	
	May 7	4	
	,, 14	5	
	June 4	4	
	,, 18	3	
	July 2	2½	
	Sept. 24	3	
	Oct. 29	4	
	Dec. 10	3½	3 5 2
1892.	Jan. 21	3	
	April 7	2½	
	,, 28	2	
	Oct. 20	3	2 10 6
1893.	Jan. 26	2½	
	May 4	3	
	,, 11	3½	
	,, 18	4	
	June 8	3	
	,, 15	2½	
	Aug. 3	3	
	,, 10	4	
	,, 24	5	
	Sept. 14	4	
	,, 21	3½	
	Oct. 5	3	3 1 1
1894.	Feb. 1	2½	
	,, 22	2	2 2 3
1895.	. .	2	2 0 0
1896.	Sept. 10	2½	
	,, 24	3	
	Oct. 22	4	2 9 8
1897.	Jan. 21	3½	
	Feb. 4	3	
	April 8	2½	
	May 13	2	
	Sept. 23	2½	
	Oct. 14	3	2 12 8
1898.	April 7	4	
	May 26	3½	
	June 2	3	
	,, 30	2½	
	Sept. 22	3	
	Oct. 13	4	3 4 11
1899.	Jan. 19	3½	
	Feb. 2	3	
	July 13	3½	
	Oct. 3	4½	
	,, 5	5	
	Nov. 30	6	3 15 1
1900.	Jan. 11	5	
	,, 18	4½	
	,, 25	4	
	May 24	3½	
	June 14	3	
	July 19	4	3 19 3
1901.	Jan. 3	5	

Date.	Per cent.	Yearly Aver. £ s. d.
1901. Feb. 7	4½	
,, 21	4	
June 6	3½	
,, 13	3	
Oct. 31	4	3 14 4
1902. Jan. 23	3½	
Feb. 6	3	
Oct. 2	4	3 6 7
1903. May 21	3½	
June 18	3	
Sept. 3	4	3 15 0
1904. April 14	3½	
,, 21	3	3 6 1
1905. Mar. 9	2½	
Sept. 7	3	
,, 28	4	3 0 1
1906. April 5	3½	
May 3	4	
June 21	3½	
Sept. 13	4	
Oct. 11	5	
,, 19	6	4 5 3
1907. Jan. 17	5	
April 11	4½	
,, 25	4	
Aug. 15	4½	
Oct. 31	5½	
Nov. 4	6	
,, 7	7	4 18 5
1908. Jan. 2	6	
,, 16	5	
,, 23	4	
Mar. 5	3½	
,, 19	3	
May 28	2½	3 0 4
1909. Jan. 14	3	
April 1	2½	
Oct. 7	3	
,, 14	4	
,, 21	5	
Dec. 9	4½	3 2 0
1910. Jan. 6	4	
,, 20	3½	
Feb. 10	3	
Mar. 17	4	
June 2	3½	
,, 9	3	
Sept. 29	4	
Oct. 20	5	
Dec. 1	4½	3 14 5
1911. Jan. 26	4	
Feb. 16	3½	
Mar. 9	3	
Sept. 21	4	3 9 4
1912. Feb. 8	3½	
May 9	3	
Aug. 29	4	
Oct. 17	5	3 15 6
1913. April 17	4½	
Oct. 2	5	4 15 4
1914. Jan. 8	4½	
Jan. 22	4	
,, 29	3	
July 30	4	
,, 31	8	
Aug. 1	10	
(Outbreak of war with Germany.)		
Aug. 6	6	
,, 8	5	4 0 9
1915.	5	5 0 0
1916. July 13	6	5 9 7
1917. Jan. 18	5½	
April 5	5	5 3 1
1918.	5	5 0 0
1919. Nov. 6	5	5 3 0
1920. April 15	7	6 14 2
1921. April 28	6½	
June 23	6	
July 21	5½	
Nov. 3	5	6 1 11
1922. Feb. 16	4½	
April 13	4	
June 15	3½	
July 13	3	3 14 0
1923. July 5	4	3 9 9
1924. . . .	4	4 0 0
1925. Mar. 5	5	
Aug. 6	4½	
Oct. 1	4	
Dec. 3	5	4 11 6
1926. . . .	5	5 0 0
1927. April 21	4½	4 13 1
1928. . . .	4½	4 10 0
1929. Feb. 7	5½	
Sept. 26	6½	
Oct. 31	6	
Nov. 21	5½	
Dec. 12	5	5 9 10
1930. Feb. 6	4½	
Mar. 6	4	
,, 20	3½	
May 1	3	3 8 3
1931. May 14	2½	
July 23	3½	
,, 30	4½	
Sept. 20	6	3 19 4½
1932. Feb. 18	5	
Mar. 10	4	
,, 17	3½	
April 21	3	
May 12	2½	
June 30	2	3 0 2
1933.		2 0 0
1934.		2 0 0
1935.		2 0 0
1936.		2 0 0
1937.		2 0 0
1938.		2 0 0
1939. Aug. 24	4	
(In anticipation of war with Germany)		
Sept. 28	3	
Oct. 26	2	2 5 3
1940.		2 0 0
1941.		2 0 0
1942.		2 0 0
1943.		2 0 0
1944–50		2 0 0
1951. Nov. 8	2½	2 1 6
1952. Mar. 11	4	2 14 2
1953. Sept. 17	3½	3 17 1

BANK RATE BOOK. This book shows all the changes for a number of years past which have taken place in the Bank of England Rate, and whenever any alteration of the Rate occurs, a record of it, with the date of the change, is immediately entered. The averages of the Bank Rate for the half-year and for the year are also entered in the book.

BANK RETURN. By the Bank Charter Act, 1844 (7 & 8 Vict. c. 32), Section 6, it is provided that the Bank of England issue a

weekly return as to its financial position

An account of the amount of Bank of England notes issued by the Issue Department of the Bank of England and of gold coin and of gold and silver bullion respectively and of securities in the said Issue Department and also an account of the capital stock and the deposits and of the money and securities belonging to the said Governor and Company in the Banking Department of the Bank of England on some day in every week to be fixed by the Commissioners of Stamps and Taxes shall be transmitted by the said Governor and Company weekly to the said Commissioners in the form prescribed in the schedule hereto annexed marked (A) and shall be published by the said Commissioners in the next succeeding *London Gazette* in which the same may be conveniently inserted By the Currency and Bank Notes Act 1928 the form prescribed under the above section may be modified to such an extent as the Treasury with the concurrence of the Bank consider necessary having regard to the provisions of this Act (Section 10) The Weekly Return is still published in the *London Gazette* and is also issued to the Press and public It is published on Thursdays and is made up to the close of business on the previous day

The Weekly Return issued by the Bank of England on 7th September 1844 (that is shortly after the Bank Charter Act was passed) is given for comparison with the Weekly Returns issued to the press on 29th November 1928 and 20th April 1949 respectively

ISSUE DEPARTMENT
September 7 1844

Notes issued	£28 351 295
Government Debt	£11 015 100
Other securities	2 984 900
Gold coin and bullion	12 657 208
Silver bullion	1 694 087
	£28 351 295

BANKING DEPARTMENT
September 7 1844

Proprietors capital	£14 553 000
Rest	3 564 729
Public deposits	3 630 809
Other deposits	8 644 348
Seven day and other bills	1 030 354
	£31 423 240
Government securities	£14 554 834
Other securities	7 835 616
Notes	8 175 025
Gold and silver coin	857 765
	£31 423 240

The currency note issue of the Treasury was transferred to the Bank of England on 22nd November 1928 the Bank was authorised to issue notes for £1 and for 10s and the fiduciary note issue that is the amount of notes that may be issued against securities was fixed at £260 000 000 The securities may include silver coin not exceeding £5 500 000 (See CURRENCY AND BANK NOTES ACT 1928)

The Weekly Return of the Bank issued 29th November 1928 is regarded as an historical document because it was the first Return to be issued after the amalgamation of the currency note issue with the Bank's own issue and because it inaugurated a new and more informative type of Return The following is the Return for that date—

ISSUE DEPARTMENT

Notes Issued—	
In circulation	£367 001 148
In banking department	52 087 797
	£419 088 945
Government debt	£11 015 100
Other Government securities	233 568 550
Other securities	10 176 193
Silver coin	5 240 157
Amount of fiduciary issue	£260 000 000
Gold coin and bullion	159 088 945
	£419 088 945

BANKING DEPARTMENT

Proprietors capital	£14 553 000
Rest	3 254 001
Public deposits	21 452 051
Other deposits—	
Bankers	62 379 409
Other accounts	37 185 203
Seven day and other bills	2 649
	£138 826 313
Government securities	£52 180 327
Other securities—	
Discounts and advances	13 586 293
Securities	20 214 855
Notes	52 087 797
Gold and silver coin	757 041
	£138 826 313

The Return for 20th April 1949 is given on page 80 showing the war time changes as regards the note issue and gold reserve and the above mentioned changes in nomenclature

As a result of the withdrawal of silver coin and its replacement by cupro nickel coin following the Coinage Act 1946 in the Bank Return for 13th November 1946 and thereafter the item in the Issue Department Silver Coin is styled Coin other than

April 20, 1949

ISSUE DEPARTMENT

	£
Notes Issued—	
In Circulation	1,280,611,454
In Banking Department	19,636,379
	£1,300,247,833
	£
Government Debt	11,015,100
Other Government Securities	1,288,255,118
Other Securities	717,031
Coin (other than Gold)	12,751
Amount of Fiduciary Issue	1,300,000,000
Gold Coin and Bullion (at 172s. 3d. per oz. fine)	247,833
	£1,300,247,833

BANKING DEPARTMENT

	£
Capital	14,553,000
Rest	3,210,079
Public Deposits—	
Public Accounts*	12,755,494
H.M. Treasury Special Account	688,270
Other Deposits—	
Bankers	307,422,553
Other Accounts	93,964,163
	£432,593,559
	£
Government Securities	370,663,941
Other Securities—	
Discounts and Advances	16,277,644
Securities	21,606,984
Notes	19,636,379
Coin	4,408,611
	£432,593,559

* Including Exchequer, Savings Banks, Commissioners of National Debt and Dividend Accounts.

Gold Coin''; whilst in the Banking Department, "Gold and Silver Coin" is now simply "Coin."

Under the Bank Charter Act, 1844, the Bank was empowered to include silver coin in its metallic backing of the note issue, but, in fact, never used this power. The "Silver Coin" which appears in the Return above arose on the amalgamation of the note issues in 1928, when the Bank took over the assets held against Treasury notes in the old Currency Notes Account. These included silver coin, which was consequently absorbed into the fiduciary issue cover and not into the metallic reserve. The coin held in the Banking Department has for sometime consisted mostly of silver, which in due course will give place to cupro-nickel.

The Issue Department section of the Return for 20th April, 1949, shows on the one side the total amount of notes issued by that Department and, on the other side, the securities and coin (forming the security for the fiduciary issue) and the gold coin and bullion held in the Department, against which the notes have been issued. Only a nominal amount of gold has been held by the Bank of England for this purpose since 6th September, 1939, when the Issue Department's holding was finally transferred to the Exchange Equalisation Account in accordance with the policy of concentrating the country's gold resources in this Account. The value of the gold now held by the Issue Department is shown at current market price, which (in the Return dated 20th April, 1949) is quoted as 172s. 3d. per oz. fine. This procedure was introduced on and after 1st March, 1939, when, under the terms of the Currency and Bank Notes Act, 1939, the assets of the Issue Department were revalued weekly at current market values. The first asset, "Government Debt," £11,015,100, formed the amount of the old Government debt shown in the 1844 Return and is still retained as a separate item.

The first item in the Return for the Banking Department—Capital, £14,553,000—was, before the nationalisation of the Bank of England on 1st March, 1946, designated "Proprietors' Capital." The original capital of the Bank, when it was established in 1694, was £1,200,000, and it was increased from time to time until it reached the amount of £14,553,000, in 1816, at which figure it has since remained. Under the terms of the Bank of England Act, 1946, the whole of the existing capital stock was transferred to the Treasury. The next item is the Rest or Reserve Fund, £3,576,771, which has been accumulated from profits and to which profits have been added from time to time. This item is never allowed to fall below £3,000,000.

Public Deposits represent the moneys paid into the Bank by the Government Departments,

"H.M. Treasury Special Account" first figured on the Return in August, 1948. Its balance represents the sterling equivalent of the United States dollar outgoings on "E.R.P." grants under Marshall aid, and notified to the Bank of England from time to time.

The item Other Deposits is divided to show bankers deposits and other accounts The former are composed of the balances kept with the Bank of England by banks in England Scotland and Northern Ireland The Bank of England is thus the Bank upon which all other banks would rely in a time of pressure In ordinary times when money is abundant and not in demand the amount of Other Deposits increases owing to bankers keeping larger balances in the Bank but when the demand for money becomes stronger the bankers balances diminish and the amount of Other Deposits therefore decreases

On the assets side the item Other Securi ties is divided to show discounts and advances made by the Bank and other securities

The Reserve is formed of the last two items on the Return notes and coin The notes are those held by the Banking Depart ment in the ordinary course of its banking business and are those shown by the Issue Department as notes issued and held in the Banking Department The percentage which the Reserve bears to the liabilities to the public (i e Public Deposits and Other De posits) is known as the Proportion and is an index to the strength of the Bank s position In the Return for 20th April 1949 notes and coin amount to £24 044 990 and the Proportion to the Public and Other deposits £414 830 480 was approx imately 5 8 per cent

BANK SHARES The capital issued by banks consists of shares which are only partly paid and in some banks also of shares which are fully paid Contracts for the purchase and sale of bank shares or stock must set forth the distinctive numbers of the shares or stock This requirement is not now observed however (See LEEMAN S ACT)

BANK STOCK The stock or capital of the Bank of England before public owner ship

The Bank was established in 1694 with a capital of £1 200 000 and by the year 1816 it had been increased to £14 553 000 at which figure it still stands By the Bank of England Act 1946 this stock was trans ferred to the Treasury holders thereof re ceiving in exchange a 3 per cent Government Stock (See BANK OF ENGLAND)

BANKER AND CUSTOMER The ord inary relationship between a banker and a customer is that of debtor and creditor When a customer pays in money to the credit of his account the banker becomes the debtor and the customer the creditor but when the banker makes a loan to a customer the position is reversed as the customer is then the debtor and the banker the creditor The money which a banker receives from a customer is at the free dis posal of the banker he may preserve it in his till invest it in some security or lend it out to another customer but the customer retains the right to demand back a similar amount or to draw cheques upon the banker up to that sum the cheques being payable either to the customer himself or to some other person The obligation of a banker to pay his customer s cheques is in addition to the relationship of debtor and creditor The right to overdraw an account however only arises from a special agreement The customer may also accept bills and arrange with the banker that they be charged to his account at maturity or he may in certain cases make arrangements for the banker to accept bills on his behalf In order to con stitute a person a customer Lord Davy said in *Great Western Railway* v *London and County Banking Co* [1901] A C 414 I think there must be some sort of account either a deposit or a current account or some similar relation See other cases under CUSTOMER (See BANK)

In *Swiss Bank Corporation* v *Joachimson* (1921) 37 T L R 534 the Court of Appeal held that express demand by a customer for repayment of a current account is a con dition precedent to the right to sue the banker for the amount A banker may therefore have to face legal claims for balances which have remained dormant for more than six years This decision will not have much practical effect as a banker never takes advantage of the Limitation Act 1939 Atkin L J in his judgment summarised the relations between a banker and his customer as follows The bank under takes to receive money and to collect bills for its customer s account The proceeds so received are not to be held in trust for the customer but the bank borrows the proceeds and undertakes to repay them The promise to repay is to repay at the branch of the bank where the account is kept and during banking hours It includes a promise to repay any part of the amount due against the written order of the cus tomer addressed to the bank at the branch and as such written orders may be out standing in the ordinary course of business for two or three days it is a term of the

contract that the bank will not cease to do business with the customer except upon reasonable notice. The customer, on his part, undertakes to exercise reasonable care in executing his written orders so as not to mislead the bank or to facilitate forgery. I think it is necessarily a term of such contract that the bank is not liable to pay the customer the full amount of his balance until he demands payment from the bank at the branch at which the current account is kept." (See LIMITATION ACT, 1939: UNCLAIMED BALANCES.)

If a customer leaves with his banker a parcel of securities for safe custody, the banker's position is that of a bailee, and his liability depends, to a certain extent, upon whether he undertakes the duty gratuitously or for reward. The difference between a banker as a debtor to his customer and as a bailee may be illustrated as follows: If John Brown pays in £20 to the credit of his account, the banker becomes Brown's debtor and is liable to repay to Brown £20 on demand, but until the demand is made the banker can do what he likes with the money, and the £20 which is ultimately repaid to Brown is not, of course, the same coins as were originally handed by Brown to the banker; but if Brown gives to the banker a sealed bag containing, say, coins to the value of £20 and leaves it for safe custody, the banker becomes a bailee and must take care of the bag, as entrusted to him and return it, with the contents untouched, to the customer when required. (See SAFE CUSTODY.)

A banker and his staff are bound to secrecy regarding the business and accounts of the customers, but a banker may, in certain cases, be compelled to give evidence in a court of law, and he may also be required to give a copy of entries in the books of the bank. (See BANKERS' BOOKS (EVIDENCE) ACT, 1879.)

In *Tournier* v. *National Provincial and Union Bank of England, Ltd.* (1924), 40 T.L.R. 214, Bankes, L.J., said in the course of his judgment, with regard to the claim for damages for breach of the confidence existing between banker and customer, that the duty of a banker towards his customer not to disclose his affairs is a legal one arising out of contract and that the duty is not absolute, but qualified. The qualifications of the contractual duty of secrecy implied in the relation of banker and customer can be classified under four heads—

(1) Where disclosure is under compulsion of law.

(2) Where there is a duty to the public to disclose.

(Example, where danger to the State or public duty may supersede the duty of the agent to his principal.)

(3) Where the interests of the bank require disclosure.

(Example, where a bank issues a writ claiming payment of an overdraft, stating on the face of the writ the amount of the overdraft.)

(4) Where the disclosure is made by the express or implied consent of the customer.

(Example, where the customer authorises a reference to his banker.)

The duty does not cease the moment a customer closes his account. Information gained during the currency of the account remains confidential, unless released in circumstances bringing the case within one of the above four classes of qualification. Again, the confidence is not confined to the actual state of the customer's account. It extends to information derived from the account itself.

"A more doubtful question is whether the confidence extends to information in reference to the customer and his affairs derived not from the customer's account, but from other sources, as, for instance, from the account of another customer of the customer's bank. . . . I cannot think that the duty of non-disclosure is confined to information derived from the customer himself or from his account."

As to a banker's position when he is requested by another banker to supply an opinion as to the status or sufficiency of a customer, see BANKER'S OPINIONS.

A bank which is empowered by its memorandum of association may act in the capacity of sole executor under a will, or as trustee under a will or settlement, or as custodian trustee. (See BANK AS EXECUTOR AND TRUSTEE, CUSTODIAN TRUSTEE.)

Further information respecting the various matters and positions by which a banker is brought into more or less direct contact with his customers will be found under the respective headings, and in particular the following articles may be referred to: ACCOUNTS, ADVANCES, BANKRUPT PERSON, COLLECTING BANKER, COMPANIES, DEATH OF CUSTOMER, DEPOSIT RECEIPT, PARTNERSHIPS, PAYING BANKER, PROMISSORY NOTE, SECURITY, STOCKBROKING TRANSACTIONS.

BANKERS' AGENTS. (See AGENTS.)

BANKERS' BOOKS (EVIDENCE) ACT, 1879 (42 Vict. c. 11). This Act was passed on 23rd May 1879.

In *Rex* v. *Bono & Another* (1913), 29 T.L.R. 635, it was held that this Act was for the benefit of bankers, and its object was to relieve them of the necessity of actually attending in court with their books; it was not passed to increase facilities for discovery. It was clearly a matter of judicial discretion what were proper cases in which to afford such facilities; certainly the case of a defendant seeking to justify a libel was not such a case.

"Section 3. Subject to the provisions of this Act, a copy of any entry in a banker's book shall in all legal proceedings be received as *prima facie* evidence of such entry, and of the matters, transactions, and accounts therein recorded.

"4. A copy of an entry in a banker's book shall not be received in evidence under this Act unless it be first proved that the book was at the time of the making of the entry one of the ordinary books of the bank, and that the entry was made in the usual and ordinary course of business, and that the book is in the custody or control of the bank.

"Such proof may be given by a partner or officer of the bank, and may be given orally or by an affidavit sworn before any Commissioner or person authorised to take affidavits.

"5. A copy of an entry in a banker's book shall not be received in evidence under this Act unless it be further proved that the copy has been examined with the original entry and is correct.

"Such proof shall be given by some person who has examined the copy with the original entry, and may be given either orally or by an affidavit sworn before any Commissioner or person authorised to take affidavits.

"6. A banker or officer of a bank shall not in any legal proceeding to which the bank is not a party, be compellable to produce any banker's books, the contents of which can be proved under this Act, or to appear as a witness to prove the matters, transactions, and accounts therein recorded, unless by order of a judge made for special cause.

"7. On the application of any party to a legal proceeding, a Court or judge may order that such party be at liberty to inspect and take copies of any entries in a banker's book for any of the purposes of such proceedings. An order under this Section may be made either with or without summoning the bank or any other party, and shall be served on the bank three clear days before the same is to be obeyed, unless the Court or judge otherwise directs.

"8. The costs of any application to a Court or judge under or for the purposes of this Act, and the costs of anything done or to be done under an order of a Court or judge made under or for the purposes of this Act, shall be in the discretion of the Court or judge, who may order the same or any part thereof to be paid to any party by the bank, where the same have been occasioned by any default or delay on the part of the bank. Any such order against a bank may be enforced as if the bank was a party to the proceeding.

"9. In this Act the expressions 'bank' and 'banker' mean any person, persons, partnership, or company carrying on the business of bankers and having duly made a return to the Commissioners of Inland Revenue, and also any savings bank certified under the Acts relating to savings banks, and also any Post Office Savings Bank.

". . . Expressions in this Act relating to 'bankers' books' include ledgers, day books, cash books, account books, and all other books used in the ordinary business of the bank.

"11. Sunday, Christmas Day, Good Friday, and any bank holiday shall be excluded from the computation of time under this Act."

The word "Court," as used in Section 7 is defined in Section 10 as "the Court, judge, arbitrator, person or persons before whom a legal proceeding is held or taken." Thus a magistrate before whom criminal proceedings are being taken, has power to order that the prosecutor may inspect and take copies of entries in the books of a bank at which the defendant keeps his account.

By Section 432 of the Companies Act, 1948, where a company carrying on the business of bankers has duly forwarded to the registrar of companies the annual return required by Section 124, Sixth Schedule of this Act, and has added thereto a statement of the names of the several places where it carries on business, the company shall be deemed to be a "bank" and "bankers" within the meaning of the Bankers' Books (Evidence) Act, 1879.

In *Waterhouse* v. *Barker* (1924), 40 T.L.R. 805, the plaintiff applied under Section 7 of the above Act for liberty to inspect and take copies of certain entries in the female defendant's bankers' books.

The defendant objected to produce those entries, swearing that they might tend to incriminate her and subject her to a criminal prosecution. It was held that a litigant who swears that an inspection might tend to incriminate him (or her) is privileged from inspection, and, therefore, as the defendant had sworn that the entries in question might tend to incriminate her, no order for inspection could be made before the trial of the action.

BANKERS' CLEARING HOUSE. (See CLEARING HOUSE.)

BANKER'S DRAFT. A person who wishes to remit money to someone in another place may, if he does not send his own cheque, obtain from his banker a draft on demand payable to the person who is to be paid the money. It may be drawn upon the banker's London office or London agents, or upon one of the banker's own branches, or upon some other bank where an arrangement exists for drafts to be so drawn. Whenever a draft is drawn, an advice is dispatched the same day, advising the London agents, bank or branch, as the case may be, of the particulars of the draft, so that the banker on whom it is drawn may recognise the draft when it is presented.

By the Bank Charter Act, 1844, "it shall not be lawful for any banker to draw, accept, make, or issue in England or Wales, any bill of exchange or promissory note, or engagement for the payment of money payable to bearer on demand," except those banks which were lawfully issuing their own notes on 6th May, 1844. The last note issue of a bank in England disappeared in 1921, leaving only the Bank of England with a note issue.

A draft on demand, like a cheque, requires a 2d. stamp. A draft drawn by any banker in the United Kingdom upon any other banker in the United Kingdom not payable to bearer or to order, and used solely for the purpose of settling or clearing any account between such bankers is exempt from stamp duty. (See BANKER'S PAYMENT.)

A draft on demand drawn by one branch upon another branch or upon the head office, is not a cheque within the meaning of the Bills of Exchange Act, 1882, as it is not addressed by one person to another, which is part of the definition of a cheque.

By the Bills of Exchange Act (1882) Amendment Act, 1932, it is provided, however, that Sections 76 to 82 of the Bills of Exchange Act, 1882 (i.e. the crossed cheque sections), shall apply as amended by the Bills of Exchange (Crossed Cheques) Act, 1906, to a banker's draft as if the draft were a cheque. The phrase "banker's draft" is defined by the Act as "a draft payable on demand drawn by or on behalf of a bank upon itself, whether payable at the head office or some other office of the bank." This amending Act was passed to afford the same protection by way of crossing to such instruments as obtains in the case of cheques. These documents can now be effectively crossed, and when so marked can be regarded in all respects like crossed cheques. A further protection is now available in adding the words "not negotiable" to the crossing.

A banker paying a crossed banker's draft is protected against a forged indorsement by Section 80 of the principal Act, as amended by the new Act of 1932. In paying an uncrossed draft, he is not protected by Section 60, inasmuch as the amending Act only extends Sections 76 to 82 to banker's drafts, and reliance must still be placed on Section 19 of the Stamp Act, 1853, in respect of protection against forged indorsements, and this is as follows—

"Provided always, that any draft or order drawn upon a banker for a sum of money payable to order on demand which shall, when presented for payment, purport to be indorsed by the person to whom the same shall be drawn payable, shall be a sufficient authority to such banker to pay the amount of such draft or order to the bearer thereof; and it shall not be incumbent on such banker to prove that such indorsement, or any subsequent indorsement, was made by or under the direction or authority of the person to whom the said draft or order was or is made payable, either by the drawer or any indorser thereof."

It is considered by some authorities that this section protects a banker in paying not only drafts drawn by one branch on another or on the head office, but also drafts drawn abroad on the head office in England.

In the case of a draft after date, however, a forged or unauthorised signature is wholly inoperative and no right can be acquired through or under that signature. (Section 24, Bills of Exchange Act, 1882.)

Where a banker's draft has been lost, a new one will be issued only on a satisfactory indemnity being provided. (See Bills of Exchange Act, 1882, Section 69.) Countermand of payment will not be accepted by a bank of its own draft, but if lost before indorsement, advice of its loss would virtually make it impossible for the draft to be cashed at the drawee's office. If, however,

it was negotiated abroad, this would not follow, as a title can be made through a forgery in some foreign countries.

Where a customer applies for a banker's draft, the form of application and authority to debit his account should be stamped twopence, unless a cheque accompanies it.

The mere production of a cheque by the customer's agent without other authority is not sufficient. In *Dominion & Gresham Guarantee Co.* v. *Bank of Montreal*, a Privy Council case (see *Financial News*, 18th July, 1930), an official of a company procured the proper complement of signatures to a cheque payable to the company's bankers and obtained, in exchange for the cheque and an application form signed by himself, a bank draft on New York in fraud of his company. It was held that the bank was liable for issuing drafts without the company's authority.

BANKER'S MORTGAGE. A mortgage given to a banker usually takes one of three forms—a legal mortgage, an equitable mortgage, or an equitable mortgage incorporating a power of attorney in favour of one of the bank's officials and sometimes a declaration of trust by the mortgagor.

Practice differs as to which type is used, but most banks keep standard forms of legal and equitable mortgages, and, in a few cases, forms for equitable mortgages including a power of attorney and declaration of trust as mentioned above. Some banks use mortgage forms to cover all moneys lent or to be lent; others insert a specific sum as the amount recoverable thereunder.

There are features common to all these forms; they are drawn as a continuing security, the personal covenant is to pay on demand, a right of realisation on default or within a short time thereafter is covenanted for, the right of consolidation (see CONSOLIDATION OF MORTGAGES) is preserved, and the power of the mortgagor to grant leases is subject to the bank's consent.

A legal mortgage is executed under seal and may take the form of a grant of a term of years (usually 3,000) if a freehold, or, if a leasehold, a sub-demise of the property, for a term one day less than the mortgagor's term. (See MORTGAGE.) Alternatively, the formula for both freehold and leasehold property may be used of a "charge by way of legal mortgage." (See CHARGE BY WAY OF LEGAL MORTGAGE.) Some banks use the latter form, others adhere to the more elaborate formula.

A legal mortgage requires stamping at the rate of 5s. per cent on the highest sum advanced or to be advanced, or on the limit inserted in the form. Collateral stamping is permissible. (See COLLATERAL STAMPING.)

An equitable mortgage merely gives a charge on the property scheduled, but contains, in addition to the above-mentioned common features, covenants to execute a legal mortgage if required and to execute any necessary documents to convey the property to a purchaser. It is executed under hand, unless it contains the power of attorney as mentioned above, when it will be executed under seal. (See EQUITABLE MORTGAGE.)

An equitable mortgage requires stamping at the rate of 2s. per cent on the highest amount advanced or to be advanced or on the limit inserted, unless it contains a power of attorney, when, being under seal, it requires the rate of 5s. per cent.

Collateral stamping is not available for equitable mortgages stamped at 2s. per cent.

A legal mortgage is discharged by the completion of the statutory receipt usually found on the back of the mortgage form and requires sealing by the bank. (See STATUTORY RECEIPT.)

An equitable mortgage, not forming part of the title, is often marked "Cancelled" and handed to the mortgagor; if a discharge is asked for, however, a simple receipt for the moneys (or balance of the moneys) secured may be indorsed under hand on the mortgage and will not require a receipt stamp by virtue of the Stamp Act, 1891 (Receipts—Exemption No. 11). (See also MORTGAGE.)

BANKER'S OPINIONS. One of the cases where a bank is absolved from the duty of secrecy regarding his customer's affairs, given in *Tournier* v. *National Provincial & Union Bank of England, Ltd.* (see under BANKER AND CUSTOMER) is where the disclosure is made by the express or implied consent of the customer. Frequently customers give their banker's name as a reference—this is express consent—but a large number of inquiries are made which are not at the instance of the customer. Some authorities consider that the consent of the customer is implied in such cases, inasmuch as by opening an account he impliedly agrees to the established usages of bankers obtaining as regards his account. In the above case, Atkin, L.J., said: "It appears to me that if it (i.e. the practice of bankers to give information about their customers to other bankers) is justified it must be upon the

basis of an implied consent of the customer." In *Parsons* v. *Barclay & Co. and Another* (1910), 26 T.L.R. 628, Baron Bramwell's opinion in *Swift* v. *Jewsbury*, L.R. 9 Q.B. 301, was quoted with approval, to the effect that the giving of opinions by one banker to another was a well-established custom among bankers.

Replies to inquiries should be carefully worded so as to avoid any possibility of an action for libel by the customer. Legal proceedings have more usually arisen, however, at the instance of the party at whose instance the inquiry was made.

Actions may be for fraudulent misrepresentation or for innocent misrepresentation. The first term connotes something wider than criminal fraud—there can be a legal fraud, and in this sense a fraudulent misrepresentation is one made "knowing it not to be true or without belief that it is true or . . . recklessly or carelessly as to whether it was true or false." (Ridley, J., in *Parsons* v. *Barclay & Co. and Another*.) But by Lord Tenterden's Act, 1828, "no action shall be brought whereby to charge any person upon or by reason of any representation or assurance made or given concerning or relating to the character, credit, ability, trade or dealings of any other person to the intent or purpose that such other person may obtain credit, money or goods upon it, unless such representation or assurance be made in writing, signed by the party to be charged therewith."

Hence a bank cannot be charged with fraudulent misrepresentation unless the opinion bears its seal (i.e. its signature). If the opinion is signed by the manager, he will be liable if his answer can be construed as fraudulent misrepresentation. If, as is sometimes done, the opinion is unsigned, neither bank nor manager will be liable.

The more usual risk comes from innocent misrepresentation. This, in itself, is not a cause of action unless it can be shown that the answer was given negligently. This means that it must be shown that the banker is under a duty to take care, and the duty is to answer honestly from the facts immediately before the banker; it does not extend to seeking out information from sources beyond the banker's immediate province. In *Parsons* v. *Barclay & Co. and Another* (*supra*) the Appeal Court held that no further duty was required of a banker than that of answering honestly and to the best of his ability and judgment from the facts immediately before him.

In *Batts Combe Quarry Co.* v. *Barclays Bank, Ltd.* (*The Times*, 17th October, 1931), the plaintiffs alleged that the bank was negligent and guilty of a breach of duty in answering an inquiry made on their behalf by another bank. The jury found, on the direction of the judge, for the defendants, on the ground that there was no evidence that the defendants owed a duty to the plaintiffs and that there was in fact no evidence of negligence.

Suitable records are kept by banks of answers given to inquiries and of answers received to inquiries. A note should be made of any reports given orally and not in writing. Answers are usually given only to bankers whose names appear in the Banker's Almanac and to certain recognised Trade Protection Societies. Any inquiries received from other sources are returned with a request for them to be put through a banker. The police have no more right than other persons to information unless they produce a Court Order. The Board of Trade and the Director of Public Prosecutions have certain rights to information concerning a company whose affairs are the subject of an inspection or which is in liquidation, by Sections 164–171 and 334 of the Companies Act, 1948. (See also BANKER AND CUSTOMER, SECRECY.)

BANKER'S ORDER. A written order given by a customer to a banker to make a payment or series of payments on his behalf. It is commonly used to give authority to a banker to pay subscriptions to clubs and societies year by year, insurance premiums, weekly or monthly payments, etc. The order requires a 2d. stamp. The following is a specimen form—

BANKER'S ORDER.

January 2, 19

To the British Banking Co., Ltd., Leeds.

Please to pay to the X & Y Bank, Ltd., London, the sum of £2 2s., my subscription to the A B Club for the year 19 , and a like sum on January 1 in each succeeding year until otherwise ordered.

Signed, JOHN BROWN.

N.B.—This form to be signed by the member and forwarded by him to his own banker.

By Section 32 (*b*) of the Stamp Act, 1891, "an order for the payment of any sum of money, weekly, monthly, or at any other stated periods, and also an order for the payment by any person at any time after the date thereof of any sum of money, and

sent or delivered by the person making the same to the person by whom the payment is to be made, *and not to the person to whom the payment is to be made or to any other person on his behalf,*" is deemed to be a bill payable on demand, and hence attracts the stamp duty of 2d. Accordingly, instructions given to bankers to pay club subscriptions, insurance premiums, and similar periodical payments require a 2d. stamp, but the debits charging customers' accounts with such amounts from time to time do not require stamping. Some club secretaries add a request to the blank order forms when issuing them to members, requesting the return of the completed forms to them direct instead of to the bankers concerned. The Inland Revenue Department is of opinion that such action does not take these orders out of the provisions of the above section, notwithstanding that they are delivered "to the person to whom the payment is to be made." (See *Journal of the Institute of Bankers*, Vol. xlvi, p. 168.)

An order to a banker to pay subscriptions to different payees at stated periods is liable to a duty of 2d. in respect of each such subscription, whether the payments fall to be made on the same date or not.

An order to a banker to pay over a certain sum of money against delivery of specified securities is also chargeable with the stamp duty of 2d.

An order to a banker to purchase stock and "debit the cost to my account" does not require to be stamped, as the order does not contain any reference to a definite sum of money. The office debits to the customer's account are also not liable to stamp duty. (Board of Inland Revenue.)

But if the order is to invest (say) £100 it will require stamping.

A letter of request from a customer to transfer the balance of his account from one branch to another branch, or to transfer an amount from, say, his No. 1 account to his No. 2 account, does not require a stamp. (See CHEQUE.)

BANKER'S PAYMENT. An order drawn by one banker in favour of another for settlement of certain transactions, such as local clearing differences, special presentation of cheques, etc. The use of agency accounts between different banks has of recent years considerably reduced the use of such payments. Banker's payments, i.e. orders or drafts drawn by any banker in the United Kingdom upon any other banker in the United Kingdom not payable to bearer or to order and used solely for the purpose of settling or clearing any account between such bankers, are exempt from stamp duty. (Stamp Act, 1891.)

BANKERS' RECEIPTS. Receipts given by bankers, on behalf of a company, for payments made on application for shares or for payment of calls. (See APPLICATION FOR SHARES.) Receipts on account of applications for shares must be preserved in order to be exchanged in due course for the share certificates. They do not form a security for an advance.

Receipts upon a letter of allotment are no longer exempt from stamp duty.

Several other receipts given by bankers are exempt from duty. (See under RECEIPT.)

BANKING COMPANY. The Sections of the Companies Act, 1948, which particularly refer to banking companies are as follows—

Section 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."

A statement is to be made by a limited banking company in accordance with Section 433, which is as follows—

"(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 compliance 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.

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 £ ."

By Section 164 it is provided that the Board of Trade may appoint one or more competent inspectors to investigate the affairs of any company, and to report thereon in such manner as the Board direct: in the case of a banking company having a share capital, on the application of members holding not less than one-third of the shares issued. (See INVESTIGATION OF COMPANY'S AFFAIRS.)

In the case of a banking company registered after 15th August, 1879—

* If the company has no share capital the portion of the statement relating to capital and shares m t be omitted. us

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. (Section 155 (2).)

"*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."

Since 1921, the only bank that has a note issue in England is the Bank of England. (See BANK OF ISSUE.)

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."

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 124 of this Act and has added thereto a statement of the names of the several places where it carries on the 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."

BANKRUPT PERSON. A person who has been adjudicated a bankrupt by the Court of Bankruptcy. In the early days of banking, when a banker failed, his bench, or banco, at which he did business, was broken by the people, whence the word "bankrupt." (It. *banco*, a bench. Lat. *ruptus*, broken.)

As to the validity of certain payments to a person subsequently adjudged bankrupt, or to his assignee, see under ACT OF BANKRUPTCY.

As soon as a person is adjudicated a bankrupt he is an undischarged bankrupt until he receives his discharge.

The Bankruptcy Act, 1914, provides—

Obtaining Credit by Undischarged Bankrupts.

"Section 155. (1) Where an undischarged bankrupt—

"(*a*) either alone or jointly with any other person obtains credit to the extent of ten pounds or upwards from any person without informing that person that he is an undischarged bankrupt; or

"(*b*) engages in any trade or business under a name other than that under which he was adjudicated bankrupt without disclosing to all persons with whom he enters into any business transaction the name under which he was adjudicated bankrupt;

he shall be guilty of a misdemeanour.

Dealings with Undischarged Bankrupt.

"47. (1) All transactions by a bankrupt with any person dealing with him *bona fide* and for value, in respect of property, whether real or personal, acquired by the bankrupt after the adjudication, shall, if completed before any intervention by the trustee, be valid against the trustee, and any estate or interest in such property which by virtue of this Act, is vested in the trustee shall determine and pass in such manner and to such extent as may be required for giving effect to any such transaction.

"This subsection shall apply to transactions with respect to real property completed before the first day of April, nineteen hundred and fourteen, in any case where there has not been any intervention by the trustee before that date.

"For the purposes of this sub-section, the receipt of any money, security, or negotiable instrument from, or by the order or direction of, a bankrupt by his banker, and any payment and any delivery of any security or negotiable instrument made to, or by the order or direction of, a bankrupt by his banker, shall be deemed to be a transaction by the bankrupt with such banker dealing with him for value.

"(2) Where a banker has ascertained that a person having an account with him is an undischarged bankrupt, then, unless the banker is satisfied that the account is on behalf of some other person, it shall be his

duty forthwith to inform the trustee in the bankruptcy or the Board of Trade of the existence of the account, and thereafter he shall not make any payments out of the account, except under an order of the court or in accordance with instructions from the trustee in the bankruptcy, unless by the expiration of one month from the date of giving the information no instructions have been received from the trustee."

Provisions as to Second Bankruptcy.

For Section 39 of the 1914 Act, there was substituted by the Bankruptcy (Amendment) Act, 1926, the following Section—

"(1) Where a second or subsequent receiving order is made against a bankrupt, or where an order is made for the administration in bankruptcy of the estate of a deceased bankrupt, then for the purposes of any proceedings consequent upon any such order, the trustee in the last preceding bankruptcy shall be deemed to be a creditor in respect of any unsatisfied balance of the debts provable against the property of the bankrupt in that bankruptcy.

"(2) In the event of a second or subsequent receiving order made against a bankrupt being followed by an order adjudging him bankrupt, or in the event of an order being made for the administration in bankruptcy of the estate of a deceased bankrupt, any property acquired by him since he was last adjudged bankrupt, which at the date when the subsequent petition was presented had not been distributed amongst the creditors in such last preceding bankruptcy, shall (subject to any disposition thereof made by the official receiver or trustee in that bankruptcy, without knowledge of the presentation of the subsequent petition, and subject to the provisions of Section 47 of this Act) vest in the trustee in the subsequent bankruptcy or administration in bankruptcy as the case may be.

"(3) Where the trustee in any bankruptcy receives notice of a subsequent petition in bankruptcy against the bankrupt, or after his decease of a petition for the administration of his estate in bankruptcy, the trustee shall hold any property then in his possession which has been acquired by the bankrupt since he was adjudged bankrupt until the subsequent petition has been disposed of, and, if on the subsequent petition an order of adjudication or an order for the administration of the estate in bankruptcy is made, he shall transfer all such property or the proceeds thereof (after deducting his costs and expenses) to the trustee in the subsequent bankruptcy or administration in bankruptcy, as the case may be."

In commenting upon Section 47, Sir John Paget (Gilbart Lectures, 1914, No. 1) pointed out that a banker could not ignore subsection 2, and claim the benefit of sub-section 1. If a banker does not tell the trustee or the Board of Trade of the existence of the account, he will have to pay over again to the trustee all moneys paid out on cheques or otherwise.

A banker must advise the trustee at once of the existence of such an account and endeavour to obtain his sanction for the working of the account.

A banker cannot tell whether any money paid in to an account is or is not property acquired by the bankrupt after the adjudication.

Subject to the provisions of the Act with respect to property acquired after the adjudication, a banker must pay and deliver to the trustee all money and securities in his possession which he is not by law entitled to retain as against the bankrupt or the trustee. (Section 48 (6). See under TRUSTEE IN BANKRUPTCY.)

If the wife of an undischarged bankrupt wishes to open an account in order to carry on his business, it would be advisable to obtain the consent of the trustee. (See ACT OF BANKRUPTCY.)

By Section 32 of the Bankruptcy Act, 1883—

DISQUALIFICATIONS OF BANKRUPT.

"(1) Where a debtor is adjudged bankrupt he shall, subject to the provisions of this Act, be disqualified from—

(*a*) Sitting or voting in the House of Lords, or on any committee thereof, or being elected as a peer of Scotland or Ireland to sit and vote in the House of Lords;

(*b*) Being elected to, or sitting or voting in, the House of Commons, or on any committee thereof;

(*c*) Being appointed or acting as a justice of the peace;

(*d*) Being elected to or holding or exercising the office of mayor, alderman, or councillor;

(*e*) Being elected to or holding or exercising the office of guardian of the poor, overseer of the poor, member of a sanitary authority, or member of a school board, highway board, burial board, or select vestry.

"(2) The disqualifications to which a bankrupt is subject under this Section shall be removed and cease if and when—

(*a*) the adjudication of bankruptcy against him is annulled; or

(*b*) he obtains from the Court his discharge with a certificate to the effect that his bankruptcy was caused by misfortune without any misconduct on his part.

The Court may grant or withhold such certificate as it thinks fit, but any refusal of such certificate shall be subject to appeal.

"(3) The disqualifications imposed by this Section shall extend to all parts of the United Kingdom." (See BANKRUPTCY.)

BANKRUPT ACCEPTOR. Where the acceptor of a bill which is not yet due becomes bankrupt, the banker cannot compel the person for whom he discounted the bill to take it up.

BANKRUPT AGENT. Bankruptcy does not prevent a person acting as agent, including the signing of cheques, if so authorised.

BANKRUPT DIRECTOR. By Section 187 (1) of the Companies Act, 1948, it is a criminal offence for an undischarged bankrupt to act as a director or to take any direct or indirect part in the management of a company without the leave of the Court by which he was adjudged bankrupt. An exception is made in the case of an undischarged bankrupt who was so acting on 3rd August, 1928, and has continued to act since that date and whose bankruptcy was prior to that date.

BANKRUPT DRAWEE. Presentment of the bill may be made to him or to his trustee (Section 41 (*d*), Bills of Exchange Act).

BANKRUPT DRAWER. No further cheques should be paid upon his account, with the exception of any cheque which the banker may have previously marked for payment at the drawer's request, or for the banker's own convenience in connection with the local clearing. (See MARKED CHEQUE.)

In the case of a bill where both the drawer and the acceptor are bankrupt, the banker may claim for the full amount of the bill against both estates. But if a dividend has been declared on one of the estates before the banker sends in his proof of debt on the other estate, he can only claim for the balance after crediting the dividend. If there is any balance standing to credit of the customer it can be retained against the bill.

Where notice of dishonour requires to be given, it may be given either to the drawer himself or to his trustee.

BANKRUPT EXECUTOR. The bankruptcy of an executor does not affect his right to deal with the executor account.

BANKRUPT FIRM. A petition may be presented against a firm in the firm's name and the receiving order will operate against each of the partners. (See below, BANKRUPT PARTNERSHIP.)

BANKRUPT INDORSER. A notice of dishonour may be given to the indorser himself or to his trustee. As to payments to a bankrupt indorser, see BANKRUPT PERSON.

INFANT. An infant cannot be made bankrupt. "He is not liable to bankruptcy proceedings in respect of a debt contracted by a firm of which he is a partner." (Williams' *Bankruptcy Practice*.)

BANKRUPT, JOINT ACCOUNT, JOINT DEPOSITOR. On the bankruptcy of one of joint customers, in an ordinary joint account, cheques to withdraw any balance standing to credit should be signed by the solvent creditor and the trustee in bankruptcy of the bankrupt customer.

If a mandate is held for one of the customers to sign, the mandate is determined by an act of bankruptcy. Where a loan has been made to two persons *jointly*, upon the bankruptcy of one, the other becomes liable for the full debt.

Where the parties in a joint account are known by the banker to be partners, see BANKRUPT PARTNER (below), or to be executors, see BANKRUPT EXECUTOR (above), or to be trustees, see BANKRUPT TRUSTEE (below). (See SET OFF.)

BANKRUPT, LIMITED PARTNERSHIP. (See LIMITED PARTNERSHIP.)

BANKRUPT, MARRIED WOMAN. By the

Law Reform (Married Women and Tortfeasors) Act, 1935, a married woman is subject to bankruptcy law whether carrying on business or not.

BANKRUPT PARTNERSHIP, PARTNER. See Section 33 of the Bankruptcy Act, 1914, under PROOF OF DEBTS.

A partnership is dissolved by the bankruptcy of a partner. (See Section 33 of the Partnership Act, 1890, under PARTNERSHIPS.) The remaining partners may withdraw any balance standing at credit of the firm's account. If a cheque, drawn on the firm's account by a bankrupt partner, is presented, it should not be paid without the confirmation of the other partners.

If a partner deposits his own personal securities for the firm's account, the banker may claim upon the bankrupt firm's estate for the full amount of the debt. If the firm gives security for a partner's private account, a claim may be made on the partner's estate for the full debt.

Where a partner has become bankrupt, he is no longer able by his acts to bind the firm; but if another partner has, since the bankruptcy, represented himself as being still a partner with the bankrupt, he will be liable. (See PARTNERSHIPS.)

When a firm is bankrupt, the individual partners are also bankrupt, and no further operations on any of the accounts may take place.

In settling the affairs of a bankrupt firm the debts of the firm are paid out of the firm's assets, and the debts of each partner out of each partner's separate estate. If there is any surplus after paying all the firm's debts in full, it is apportioned to the partners' separate estates, and if there is any surplus from any separate estate, after paying all the private debts of that partner in full, it forms a part of the firm's estate. If the partners have by agreement with the bank made themselves jointly and severally liable for any debt upon the firm's account, the bank will be entitled to prove along with other joint creditors against the firm's estate and along with other separate creditors against the separate estates of the partners. (See Bankruptcy Act, 1914, Schedule II, Rule 19 under PROOF OF DEBTS.)

BANKRUPT PAYEE. The drawer of a cheque need not stop payment of it merely because the payee has become bankrupt. A cheque payable to a bankrupt should not be paid. (See BANKRUPT PERSON.)

BANKRUPT, SAFE CUSTODY. Any articles left for safe custody should not be given up to a bankrupt. When a receiving order is made, the bankrupt's property vests in the official receiver, or trustee in bankruptcy.

BANKRUPT, SECURITIES. See rules regarding securities under PROOF OF DEBTS.

Bankruptcy does not affect a banker's rights to any securities belonging to the bankrupt, over which the banker has merely an equitable charge.

Where securities have been given for the bankrupt's account by someone other than the debtor himself, the proceeds of such securities should be placed to a separate account until all the dividends have been received from the debtor's estate, unless the depositor thereof (or the guarantor, as the case may be) pays off the whole of the debt and claims himself upon the estate. The advantage of a collateral security, taken in the usual form, is that, if it is not sufficient to clear off the whole debt, the banker may claim for the full debt upon the bankrupt's estate, and then fall back upon the amount realised from that security, and thus in many cases obtain full repayment of the debt. (See GUARANTEE.)

Where the power for a mortgagee either to sell or to appoint a receiver is made exercisable by reason of the mortgagor committing an act of bankruptcy or being adjudged a bankrupt, such power shall not be exercised only for those reasons, without the leave of the Court. (Law of Property Act, 1925, Section 110.)

BANKRUPT SURETY. When a guarantor for an account becomes bankrupt the debtor's account should be stopped until fresh arrangements are made. If new security is not forthcoming and the debtor is unable to repay, the banker makes a claim upon the surety's estate. When a bankrupt surety receives his discharge, he is freed from all liability with respect to the guarantee. In the case of a joint guarantee, a bankrupt surety's estate is not liable (thus differing from a several, or joint and several guarantee). On the bankruptcy of one of several guarantors, the account should be broken until fresh arrangements are made.

BANKRUPT TRUSTEE. The bankruptcy of a trustee does not cause him to vacate the office, nor has the trustee in bankruptcy any control over the trust funds. By Section 41 (1), Trustee Act, 1925, the Court may, whenever expedient, appoint a new trustee in place of a trustee who is a bankrupt.

VOLUNTARY CONVEYANCES AND TRANSFERS. If bankruptcy occurs within two years after the date of a voluntary transfer, the

transfer is void, and the trustee can claim the property. If bankruptcy occurs within ten years, the transfer is also void, unless it can be proved that the bankrupt was solvent, at the time of making the transfer, without the aid of the property comprised in the conveyance. (See SETTLEMENTS, SETTLOR BANKRUPT.)

BANKRUPTCY. When a person is unable to pay his debts, his property is, in certain circumstances, taken possession of by the official receiver or trustee in bankruptcy, who realises it and distributes the proceeds amongst the creditors. Such a proceeding is called bankruptcy, and the debtor is known as the bankrupt.

The law of bankruptcy in England is contained in the Bankruptcy Act, 1914, an Act to consolidate the law relating to bankruptcy, and in several unrepealed Sections in previous Acts.

By the 1914 Act, Section 1 (2):

"In this Act, the expression 'a debtor,' unless the context otherwise implies, includes any person, whether a British subject or not, who at the time when any act of bankruptcy was done or suffered by him—

(*a*) was personally present in England; or
(*b*) ordinarily resided or had a place of residence in England; or
(*c*) was carrying on business in England, personally, or by means of an agent or manager; or
(*d*) was a member of a firm or partnership which carried on business in England."

Where a debtor has committed an act of bankruptcy (see ACT OF BANKRUPTCY), a creditor, or creditors, whose debt or debts amount to not less than £50, may petition the Court which has bankruptcy jurisdiction over the debtor, to make a receiving order (see RECEIVING ORDER), with the object of having the debtor's estate administered under the bankruptcy law for the benefit of the creditors. A bankruptcy petition may also be presented by the debtor himself. A debtor is not adjudged a bankrupt immediately upon the making of a receiving order, but a general meeting of creditors (see MEETING OF CREDITORS) is held shortly after the order is made, to consider whether a composition or scheme of arrangement shall be entertained or whether he shall be adjudged bankrupt.

After a receiving order is made, the debtor must make out and submit to the official receiver (that is, the official of the Court who takes control of the debtor's estate) a statement of his affairs. (See Section 14, under RECEIVING ORDER. See also OFFICIAL RECEIVER.)

As soon as convenient after the expiration of the time for the submission of a debtor's statement of affairs, the Court shall hold a public sitting for the examination of the debtor, but the Court shall not declare that his examination is concluded until after the day appointed for the first meeting of creditors. (See PUBLIC EXAMINATION OF DEBTOR.)

If a debtor intends to make a proposal to his creditors for a composition in satisfaction of his debts, or a proposal for a scheme of arrangement of his affairs, he must, within four days of submitting his statement of affairs, or within such time as the official receiver may fix, lodge his proposal with the official receiver, embodying the terms of the composition or scheme and setting out particulars of any sureties or securities proposed. (See COMPOSITIONS.)

If the debtor's proposal is accepted by the creditors, the receiving order is discharged. If a trustee is not appointed, the official receiver acts as trustee for the purpose of receiving and distributing the composition, or for the purpose of carrying out the terms of the scheme. A creditor under a composition or scheme must lodge his proof of debt with the trustee.

If the composition or scheme is not accepted within fourteen days after the conclusion of the debtor's examination, or such time as is allowed by the Court, or if the creditors resolve that the debtor be adjudged bankrupt, or if they do not pass any resolution, the Court shall adjudge the debtor bankrupt (see ADJUDICATION OF BANKRUPTCY), and thereupon his property shall vest in a trustee (see TRUSTEE IN BANKRUPTCY), and be divisible amongst his creditors. As to any money or securities in a banker's hands at the time of the adjudication, or received afterwards, see under BANKRUPT PERSON.

With respect to the payment of cheques before the date on which a receiving order is made and without notice of the presentation of a bankruptcy petition, see under ACTS OF BANKRUPTCY.

The bankruptcy of a debtor, whether it takes place on his own petition or that of a creditor, dates back to the time of the act of bankruptcy being committed on which the receiving order was made against him. (Section 37 of the Bankruptcy Act, 1914. See under ADJUDICATION OF BANKRUPTCY.)

The creditors may appoint a committee

of inspection to superintend the administration of the bankrupt's property by the trustee. (See COMMITTEE OF INSPECTION.)

A trustee may be authorised by the Board of Trade to open a local banking account. (See Section 89 of the 1914 Act, under TRUSTEE IN BANKRUPTCY.)

Where the committee of inspection approve, the trustee of a bankrupt's estate may pledge any deeds belonging to the estate, if the money is required for the payment of the bankrupt's debts.

A creditor's claim against a bankrupt's estate must be made on oath and upon the prescribed form called the proof of debt. (See PROOF OF DEBTS.)

A bankrupt may, at any time after being adjudged bankrupt, apply to the Court for an order of discharge, and the Court shall appoint a day for hearing the application. (See DISCHARGE OF BANKRUPT.)

If a debtor gives a creditor a preference over other creditors, and he is adjudged a bankrupt on a petition presented within six months thereafter, the preference shall be deemed fraudulent and void as against the trustee. (See FRAUDULENT PREFERENCE.)

Any settlement of property shall, if the settlor becomes bankrupt within two years after the date of the settlement, be void against the trustee, or if he becomes bankrupt at any time within ten years after that date, be also void against the trustee, unless it is proved that the settlor was able to pay all his debts at the time he made the settlement, without the aid of the property comprised therein. (See SETTLEMENTS, SETTLOR BANKRUPT.)

Section 45 of the Bankruptcy Act, 1914, with respect to *bona fide* transactions without notice, provides as follows—

"Subject to the foregoing provisions of this Act with respect to the effect of bankruptcy on an execution or attachment, and with respect to the avoidance of certain settlements, assignments, and preferences, nothing in this Act shall invalidate, in the case of a bankruptcy—

(*a*) Any payment by the bankrupt to any of his creditors;

(*b*) Any payment or delivery to the bankrupt;

(*c*) Any conveyance or assignment by the bankrupt for valuable consideration;

(*d*) Any contract, dealing, or transaction by or with the bankrupt for valuable consideration:

Provided that both the following conditions are complied with, namely—

"(1) that the payment, delivery, conveyance, assignment, contract, dealing, or transaction, as the case may be, takes place before the date of the receiving order; and

"(2) that the person (other than the debtor) to, by, or with whom the payment, delivery, conveyance, assignment, contract, dealing, or transaction was made, executed, or entered into, has not at the time of the payment, delivery, conveyance, assignment, contract, dealing, or transaction, notice of any available act of bankruptcy committed by the bankrupt before that time." But see Section 46, Bankruptcy Act, 1914, as to the validity of certain payments to a bankrupt or his assignee, under ACT OF BANKRUPTCY.

It is the duty of the trustee to declare and distribute dividends amongst the creditors who have proved their debts. (See DIVIDENDS—IN BANKRUPTCY.)

If a debtor's estate is not likely to exceed £300 in value, it may be administered in a simpler manner than in the case of an ordinary bankruptcy. (See SUMMARY ADMINISTRATION.)

Where a judgment has been obtained in a county court and the debtor is unable to pay, and his total indebtedness does not exceed £50, the county court may make an administration order. (See ADMINISTRATION ORDER).

A debtor who is unable to pay his creditors is not always dealt with under the Bankruptcy Acts. He may call his creditors together and offer a composition, that is, to pay each creditor only so much in the pound (see COMPOSITION WITH CREDITORS), or he may offer to assign his property to a trustee, in order that it may be realised and the proceeds divided amongst the creditors. (See ASSIGNMENT FOR BENEFIT OF CREDITORS.) When an arrangement is made in either of those ways and is embodied in a deed or agreement, the deed of arrangement or agreement must be registered within seven days. (See DEED OF ARRANGEMENT.)

As to dealings with an undischarged bankrupt see BANKRUPT PERSON; and as to the avoidance of general assignments of book debts unless registered, see DEBTS, ASSIGNMENT OF.

An advertisement in the *London Gazette* of a receiving order or an adjudication order is conclusive evidence of the order having been made. (See GAZETTED.)

Stamp Duty.

By Section 148 of the Bankruptcy Act, 1914: "Every deed, conveyance, assignment, surrender, admission, or other assurance relating solely to freehold, leasehold, copyhold, or customary property, or to any mortgage, charge, or other incumbrance on, or any estate, right, or interest in any real or personal property which is part of the estate of any bankrupt, and which, after the execution of the deed, conveyance, assignment, surrender, admission, or other assurance, either at law or in equity, is or remains the estate of the bankrupt or of the trustee under the bankruptcy, and every power of attorney, proxy, paper, writ, order, certificate, affidavit, bond, or other instrument or writing relating solely to the property of any bankrupt, or to any proceeding under any bankruptcy, shall be exempt from stamp duty, except in respect of fees under this Act."

(See ACTS OF BANKRUPTCY, ADJUDICATION IN BANKRUPTCY, ADMINISTRATION ORDER, AFTER ACQUIRED PROPERTY (under heading BANKRUPT PERSON), ASSIGNMENT FOR BENEFIT OF CREDITORS, BANKRUPT PERSON, COMMITTEE OF INSPECTION, COMPOSITION WITH CREDITORS, COMPOSITIONS (BANKRUPTCY ACT), DEATH OF INSOLVENT PERSON, DEBTS (ASSIGNMENT OF), DEED OF ARRANGEMENT, DISCHARGE OF BANKRUPT, DISQUALIFICATIONS OF BANKRUPT (under heading BANKRUPT PERSON), DIVIDENDS (IN BANKRUPTCY), FRAUDULENT PREFERENCE, INSOLVENCY, INTEREST, MARRIED WOMAN, MEETING OF CREDITORS, OFFICIAL RECEIVER, PREFERENTIAL PAYMENTS, PROOF OF DEBTS, PUBLIC EXAMINATION OF DEBTOR, RECEIVING ORDER, REGISTRARS (IN BANKRUPTCY), SETTLEMENTS, SETTLOR BANKRUPT, SUMMARY ADMINISTRATION, TRUSTEE IN BANKRUPTCY, UNDISCHARGED BANKRUPT (under heading BANKRUPT PERSON).)

BANKRUPTCY NOTICE. Where a creditor has obtained a final judgment or final order against a debtor and execution has not been stayed, he may serve on the latter a bankruptcy notice. If this is not complied with within seven days of its service or a counterclaim entered for an equal or greater amount of the judgment debt, the debtor has committed an act of bankruptcy. (See also ACT OF BANKRUPTCY.)

BANKRUPTCY PETITION. (See RECEIVING ORDER.)

BAR GOLD. A bar of gold is 400 oz. fine. Smaller "bars," usually 200 oz. fine, are known as "tablets." Central bank reserves and international exchange settlements employ bar gold in large proportion, and it is measured at so much fine gold per unit of the currency of the country quoting. Bar gold is practically fine gold and is rejected if it contains too much alloy; certain signatures of recognised assayers are well known and are passed in the market, but where there is any doubt as to its origin it is assayed afresh. In this country, before the Gold Standard Act of 1925, bar gold of not less than £20,000 in value could be sold to the Mint at £3 17s. 10½d. per oz. of standard gold and minted free, but it was often more convenient to sell it to the Bank of England at £3 17s. 9d., which was its statutory buying price. The difference of 1½d. was to cover the loss of interest during the time the bullion was being minted. Between 1925–31 the Bank of England ceased to convert its notes into coin, but would sell or exchange bars containing 400 oz. of fine gold at £3 17s 10½d. per oz. of standard gold, which means in minimum amounts of nearly £1700. The Gold Standard (Amendment) Act of 1931 released the Bank from any obligation to sell gold. London quotations were changed in September, 1919, from the standard to the fine ounce basis.

(See also BANK OF ENGLAND, CENTRAL BANK, GOLD STANDARD ACT, MINT PRICE.)

BARGAIN AND SALE. This is a contract in English law, whereby property, either real or personal, is transferred from one person to another for a valuable consideration. The word "assignment" is, however, usually used for the transfer of personal property; consequently, bargain and sale may be described as a contract whereby real estate, that is, lands or tenements, whether in possession or in remainder, are conveyed from one person to another for a consideration.

BARRATRY. The word, as used in a bill of lading (*q.v.*) or a charter party (*q.v.*), means any wilful wrong-doing by the master or crew of a ship by which the interests of the shipowner are injured.

BASE COINS. A banker is justified in breaking or destroying any base coins which come into his hands. Section 26 of 24 & 25 Vict. c. 99 enacts: "Where any coin shall be tendered as the Queen's current gold or

silver coin to any person who shall suspect the same to be diminished otherwise than by reasonable wearing, or to be counterfeit, it shall be lawful for such person to cut, break, bend, or deface such coin, and if any coin so cut, broken, bent or defaced shall appear to be diminished otherwise than by reasonable wearing, or to be counterfeit, the person tendering the same shall bear the loss thereof, but if the same shall be of due weight, and shall appear to be lawful coin, the person cutting, breaking, bending, or defacing the same is hereby required to receive the same at the rate it was coined for; and if any dispute shall arise whether the coin so cut, broken, bent, or defaced be diminished in manner aforesaid, or counterfeit, it shall be heard and finally determined in a summary manner by any justice of the peace, who is hereby empowered to examine upon oath as well the parties as any other person, in order to the decision of such dispute; and the Tellers at the Receipt of Her Majesty's Exchequer, and their deputies and clerks, and the Receivers-General of every branch of Her Majesty's Revenue, are hereby required to cut, break, or deface, or cause to be cut, broken, or defaced every piece of counterfeit or unlawfully diminished gold or silver coin which shall be tendered to them in payment of any part of Her Majesty's Revenue."

Base silver coins are very frequently met with, and in some cases they are rather difficult at first sight to distinguish from genuine ones. Various tests are applied to a suspected "silver" coin. If it is a base one it will be easily cut, or bent, or broken, and its general appearance to the eye of an expert will call attention to its real nature. On close examination it will usually be found that the raised letters or figures are not so sharply defined as on a real coin. An examination of the milling will reveal a roughness and irregularity, which is often particularly noticeable at a spot on the edge representing the place where the metal was poured into the mould. Its weight and size may be tested with a good coin, and also its sound when thrown upon the counter. The sound by itself, however, is not sufficient, as a good coin which is cracked will not give the true ring. If caustic marks the coin black, it reveals its baseness, but that test may be defeated if the surface is a thin coat of silver. A pocket lens is useful in the examination of a doubtful coin, as it makes the roughness of a counterfeit coin more noticeable. Those officers who are much in contact with silver profess to be able to tell a false from a genuine coin by the touch, the false one having a "greasy" kind of feeling. "A coin or other object made of silver may be known by the following marks: (1) A fine pure white lustre, where newly rubbed or scraped; (2) a blackish tint where the surface has long been exposed to the air; (3) a moderate specific gravity; (4) a good metallic ring when thrown down; (5) considerable hardness; (6) strong nitric acid dissolves silver, and the solution turns black if exposed to light." (Jevons.)

Occasionally a counterfeit coin is met with which is actually made of silver and is of correct weight. Such a coin almost defies detection, but a close attention to the milling will usually reveal irregularities.

"We can usually ascertain whether a coin consists of gold or not, by looking for three characteristic marks: (1) The brilliant yellow colour; (2) the high specific gravity; (3) the metallic ring of the coin when thrown down, which will prove the absence of lead or platinum in the interior of the coin. Gold is insoluble in all the simple acids and does not corrode or become tarnished in any way. Strong nitric acid will rapidly attack any coloured counterfeit metal, but will not touch standard gold, or will, at the most, feebly dissolve the copper and silver alloyed with it." (Jevons.)

Where a customer receives money in payment of a cheque and takes it away without making any comment upon it, he cannot, legally, return to the banker and say that it contained a base coin. (See COINAGE.)

BAWBEE. The name of a coin, equal in value to the present halfpenny, which was at one time current in Scotland. It was issued in the reign of James V of Scotland.

The word is still frequently used in Scotland when speaking of a halfpenny.

BEAR AND BULL. Names given to speculators on a stock exchange. A bear is one who anticipates a fall in a certain security, and who sells stocks which he does not possess, hoping to buy back afterwards at a lower price, the difference constituting his profit.

A bull, on the other hand, expects a stock to rise in price, and so he buys in, not with the intention of paying for it but with the object of selling out before the settling day at an advanced figure. (See BACKWARDATION, CONTANGO, STOCK EXCHANGE.)

BEARER (CHEQUE OR BILL). "Bearer," in the Bills of Exchange Act, 1882, means the person in possession of a bill or note which is payable to bearer (Section 2).

"A bill is payable to bearer which is expressed to be so payable, or on which the only or last indorsement is an indorsement in blank." (Section 8 (3).)

"Where the payee is a fictitious or non-existing person the bill may be treated as payable to bearer." (Section 7 (3).) A bill in these sections includes a cheque.

"Where the holder of a bill payable to bearer negotiates it by delivery without indorsing it, he is called a transferor by delivery." (Section 58 (1).)

A bill (or cheque) payable to bearer does not require to be indorsed. A person, other than the drawer, cannot be sued upon a cheque, so long as it is not indorsed by him. If, however, he indorses it, he may be sued thereon by any subsequent holder. Although a transferor by delivery is not liable on the instrument in the event of its dishonour, he would be liable if there was a forged signature at the time of the transfer, because by Section 58 (3), a transferor by delivery warrants to his immediate transferee being a holder for value that the bill is what it purports to be, that he has a right to transfer it, and that at the time of transfer he is not aware of any fact that renders it valueless.

If a cheque drawn payable to bearer is indorsed "Pay J. Brown or order," it does not require John Brown's signature or any indorsement, as it is on the face of it a bearer cheque. Any indorsements on a bearer cheque need not be examined.

In practice, a bearer cheque may be altered by the payee from bearer to order, by simply striking out the printed word "bearer," or by striking it out and writing the word "order." Such an alteration does not require to be initialed.

An order cheque, however, can be altered on the face into a bearer cheque only by the drawer, who must sign the alteration; if there are more drawers than one, each must sign. A drawer's signature is preferable to mere initials, as initials are more easily forged.

When an order cheque is indorsed in blank, that is, is not made payable to any one else by the payee or indorser, it becomes a cheque payable to bearer. Any holder may convert the blank indorsement into a special indorsement, and the cheque (or bill) would again become payable to order.

A cheque or bill payable to a fictitious or non-existing person is payable to bearer. In the case of *Bank of England* v. *Vagliano Brothers*, [1891] A.C. 107, it was held that a fictitious or non-existing person included a real person who never had nor was intended to have any right to the bills. Lord Herschell said: "I have arrived at the conclusion that whenever the name inserted as that of the payee is so inserted by way of pretence merely, without any intention that payment shall only be made in conformity therewith, the payee is a fictitious person within the meaning of the statute, whether the name be that of an existing person or of one who has no existence."

A banker incurs no liability in paying, to the person presenting, an uncrossed cheque made payable to bearer by the drawer, even if the person who presents such cheque has stolen it. In *Charles* v. *Blackwell* (1877), 2 C.P.D. 151, with regard to lost or stolen bearer cheques, it was held that "where the banker paid the bearer of such a cheque, he obeyed the mandate of his customer, the drawer, and could charge him accordingly; while on the other hand, the customer was protected, and this even though the bearer so paid had no property in the cheque, but was himself a thief who had stolen it. The drawer was entitled to say to the payee, 'I gave you an instrument which you were willing to take in satisfaction of your debt if the drawee paid the amount to the bearer and this the drawee has done.'" (See AGENT.) But in an exceptional case, such as where a cheque is payable to the "British Bank, Ltd., or bearer," a banker would require to be exceedingly careful in making inquiries before paying such a cheque to a stranger, for although it is payable to the bearer the banker knows that it is not the custom for a bank to send a cheque by a stranger to be cashed. (See CROSSED CHEQUE.)

Where a person takes a cheque payable to bearer, it is advisable for him to get the transferor to indorse it and so make him a party to the cheque, as without the indorsement the transferor could not be sued upon the cheque in the event of its dishonour.

A cheque payable to "Wages or order," "Cash or order," "House or order," etc., is in some quarters mistakenly considered to be payable to bearer under Section 6 (3) of the Bills of Exchange Act, 1882, which states that bills payable to fictitious or non-existing persons are payable to bearer. Such designations, however, are not fictitious payees, but impersonal payees and in some cases the drawer's indorsement is required. Instruments so drawn, however, are not cheques, for they are not payable to the order of a specified person (*North and South Insurance*

Corporation, Ltd. v. *National Provincial Bank, Ltd.*, "*The Times*," 9th November, 1935). (See IMPERSONAL PAYEES.)

A cheque payable to "Bearer or order," the word "bearer" being written in the space for a payee's name, is payable to the bearer.

In Scotland, it is customary to request the person receiving cash for a bearer cheque to indorse it. (See BILL OF EXCHANGE, CHEQUE.)

BEARER BONDS. A bearer bond, that is a bond which is payable to the bearer, in contradistinction to a bond which is registered in the name of the holder, passes by mere delivery the full benefits conferred by the bond, so long as the transferee takes it in good faith and for value and without notice of any defect in the transferor's title. If it should ultimately appear that the transferor had stolen the bond, or had otherwise a defective title, the transferee's right to retain the bond would not be affected. A bearer bond belongs to the class of documents called negotiable instruments. (See NEGOTIABLE INSTRUMENTS.) Formerly, only bearer bonds which were issued in foreign countries and treated in this country by merchants as negotiable, were regarded by the Courts as negotiable instruments, but, within recent years, debentures to bearer of an English company have been recognised by the Courts as negotiable instruments.

In *Edelstein* v. *Schuler*, [1902] 2 K.B. 144, Bigham, J., 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."

Bonds are issued for fixed amounts, e.g. £20, £100, £200, £500. etc.

Attached to the bond, or in a separate sheet, is a series of coupons, each one being dated, if the interest is payable half-yearly, for a different half-year, and forming the warrant, upon production of which, the holder will be paid the interest represented by that coupon. When the coupons are exhausted a fresh supply may be obtained in exchange for the "talon" which is usually attached to the bond. (See TALON.) Some coupons are not dated, being payable according to advertisement. A coupon sheet should not be detached from the bond. Securities to bearer, without the current coupon, are not a good delivery on the Stock Exchange. The possessor of bearer bonds should never write his name upon them, as it might cause them to form a bad delivery.

Certain foreign Governments sometimes refuse to honour the engagements contained in a bearer bond to pay the principal or interest or to issue new coupon sheets to the bearer, because the bond has been lost or stolen or for some other reason. To protect the buyer of such a bond the London Stock Exchange Committee made a new rule in 1926. See the rule under STOCK EXCHANGE.

All bearer bonds held by a banker, whether for safe custody or security, should be entered in a register immediately upon receipt, and it is preferable that all bearer securities held in any office should be entered in a separate book, or at any rate in a special section of the ordinary safe custody or securities register, so that any one can ascertain at once what bearer securities are held in that office. The number of each bond or bearer security should be entered in the register, and, when any of them are given up to the customers, a proper receipt should be taken, either in the book or on a separate slip, setting forth the actual numbers and descriptions of the bonds. Bearer securities being, like cash, transferable by delivery, it is necessary that a banker should take the greatest care of them, and in many banks all bearer securities are kept continuously under the control of two persons. Coupons should be entered up in a diary on the due dates, so that they may be cut off and sent for collection in good time and not be overlooked.

It is the practice of several foreign governments to continue the payment of coupons after a bond has been drawn for repayment, such payments being treated as part repayment of the principal.

Certain bonds are drawn as being payable to the bearer, or "when registered, to the registered holder." In such cases the name of the registered holder is entered in a place provided on the back of the bond.

Where bearer bonds are given as security, a banker usually takes a memorandum or agreement showing the purpose for which they are lodged. No deed of transfer is necessary, as they pass to the holder by simple delivery, and even if the bonds form part of a trust and the banker had no notice of the trust when he took them as security, his title will not be affected. See the case of *Lloyds Bank Ltd., and Union of London and Smiths Bank Ltd.* v. *Swiss Bankverein*, 1912, under FLOATERS. An advance should not, of course, be made against coupons without the bond.

When bonds are left for safe custody in joint names, particularly when the parties are trustees, the banker should be most

careful not to part with the bonds unless upon the signatures of all the parties. It has been held that trustees may give authority to one of their number to cut off coupons from bonds deposited for safe custody as they fall due. In such a case it is the banker's duty to see that nothing more is removed than the coupons which are falling due. (See SAFE CUSTODY.)

In the critical war days of June, 1940, holders of bearer securities capable of being held in other forms, e.g. 3½ per cent War Loan, other British Government stocks, India and Colonial Government sterling Issues, etc., were urged to convert their bonds into registered or inscribed stock. To encourage this step, the Bank of England, the Crown Agents for the Colonies, and the Clearing Banks agreed in their capacity as registrars to forego their fees for such conversion.

The Exchange Control Act, 1947, provides that bearer securities must be lodged with or to the order of an approved bank chosen by the owner of the security. This new control was imposed to prevent the transfer of British-owned securities to foreign ownership except for value received. The ownership of such bearer securities will not be affected by this regulation, but the depositee bank will be under a duty to ensure that no illegal transfer of such items takes place.

See AMERICAN SHARE CERTIFICATES, DRAWN BONDS, REGISTERED COUPON-BOND.

BEARER BONDS REGISTER. A record of all bearer securities, whether lodged for safe custody or for security, is, in some banks, kept in a separate "Bearer Bonds Register."

The same information is shown as in the SAFE CUSTODY REGISTER (*q.v.*), but in addition the number upon the face of each bond must be carefully recorded.

BEARER SCRIP. This is a document issued by a government or a company, upon a new issue of capital, until such time as all instalments have been paid and the definitive bond is ready. The bearer scrip, like the bearer bond which is eventually received, is treated as a negotiable instrument, that is, a holder for value, without notice of any defect in the transferor's title, obtains a good title thereto. In some cases, however, bearer scrip is exchanged for registered bonds or certificates. (See BEARER BONDS, SCRIP CERTIFICATE.)

BEDFORD LEVEL CORPORATION. Bedford Level is the name given to a tract of low-lying country comprising some 95,000 acres within the counties of Northampton, Norfolk, Suffolk, Lincoln, Cambridge, and Huntingdon. A registry of deeds was established for the Bedford Level in 1663. By 15 Car. II, c. 17, Section 8 it is provided that no lease, grant or conveyance of or charge out of or upon the said 95,000 acres or any part thereof, except leases for seven years or under in possession, shall be of force, but from the time it shall be entered upon the register.

By an Act passed in 1862 it was enacted that the registration of documents shall only apply to "Adventurers Land" situate within the limits of that part of the Bedford Level which is known as the South Level.

Although priority is secured by the registration of a conveyance or charge, it has been held that the omission to register does not invalidate the document as between the parties themselves so as to prevent an action upon its covenants.

The registration office of the Bedford Level Corporation is at Ely. When a deed is registered, a record is placed thereon by the Registrar. (See YORKSHIRE REGISTRY OF DEEDS.)

BELOW ZERO. The meaning is best shown by an example. When shares, with a paid-up value of £12 10s., fall to 13 discount, the price is said to be 10s. below zero, and the seller of such shares pays the purchaser 10s. per share. Such a position arises when a holder desires to get rid of his shares and is willing to pay so much per share to anyone who will purchase the shares and assume liability for the uncalled capital.

BENEFICIAL OWNER. In a conveyance for valuable consideration, other than a mortgage, where the vendor conveys as "beneficial owner" those words have the meaning (Second Schedule, Law of Property Act, 1925) that he impliedly covenants that he has full power to convey the property expressed to be conveyed, that the property shall be quietly entered upon and enjoyed by the person to whom the conveyance is made, that the property is freed and discharged from all incumbrances and claims other than those subject to which the conveyance is expressly made, and that he will execute any further deeds for further or more perfectly assuring the property to the person to whom the conveyance is made.

If the property is leasehold the "beneficial owner" also impliedly covenants that it is a good, valid and effectual lease, and

that all rents and covenants have been paid and observed.

In the case of a conveyance of freehold property by way of mortgage, the "beneficial owner" implied that he had power to convey, that, if default was made in payment of the money intended to be secured, it should be lawful for the mortgagee to enter into and hold the property, that the property was freed from all incumbrances other than those to which the mortgage was expressly made subject, and that he would execute any further necessary deed.

In a mortgage of leasehold property, he implied that he would pay all rents and observe all covenants, so long as any money remained unpaid. (See TITLE DEEDS.)

BENEFICIARY. A person who benefits under a will is called a beneficiary. He may receive either "real" property (see REALTY), in which case he is a devisee, or he may receive "personal" property (see PERSONALTY), when he is named a legatee.

BEQUEST. A gift or legacy of personal property by a will.

BERTH BILL OF LADING. (See under BILL OF LADING.)

"BIG FIVE." The expression was first used in 1919, when referring to the five large Joint Stock Banks: Barclays; Lloyds; Midland; National Provincial; Westminster.

BILL AS SECURITY. Where a bill of exchange has been deposited or pledged as security for an advance, the holder of the bill is "deemed to be a holder for value to the extent of the sum for which he has a lien" (Section 27 (3), Bills of Exchange Act, 1882). Where the holder, e.g. a banker, sues upon the bill at maturity and recovers the amount of it, if the sum recovered is greater than the debt owing by the person who deposited the bill, he must pay over the difference to that person. If the depositor's title to the bill was in order, the banker can recover the whole amount of the bill, but if the depositor's title was defective the banker can recover the amount of the bill to the extent of his lien, provided he had no notice of the depositor's defective title when he took the bill.

When a bill is lodged as security, it should be indorsed by the person depositing it, and a memorandum of deposit should be signed by the depositor to make it clear that the bill is pledged as security. When a banker holds a bill as security, he must present it for payment at maturity, and if it is dishonoured, he must give due notice of the dishonour.

A banker may, if necessary, sue for repayment of the overdraft at any time before the maturity of the bill which he holds as a security. (*Peacock* v. *Pursell*, 1863, 32 L.J., C.P. 266.)

BILL BROKER. Bill brokers are merchants whose special business it is to buy and to sell bills. They buy them from traders and sell many of them to bankers, their profit being obtained from a difference in the rates, the bankers buying from the brokers at one-eighth or one-sixteenth per cent per annum below the market rate. A banker, although he discounts bills for his customers, does not obtain such a supply of first-class bills as he can procure from the brokers, and it is to his advantage to buy bills in this way, because he can purchase just when he pleases and what he pleases. If he anticipates requiring a certain sum of money at a certain date, he may purchase bills from the brokers which will mature at the time he requires the funds, and, in addition, in dealing with brokers and discount houses of high standing, he obtains their guarantee that the bills will be met at maturity. When bill brokers re-discount bills with bankers, instead of indorsing each bill they usually give a guarantee to cover all the bills

The use of the commercial bill having seriously declined, bill brokers deal largely in Treasury bills. Indeed, by an arrangement made in 1934 with the banks, brokers are now the sole tenderers for such bills and, furthermore, bid as a syndicate. The banks no longer tender each week for Treasury bills, but buy their supplies from the bill brokers.

The discount market also deals in short-dated Government bonds, and these are now accepted by the banks as cover for short loans.

Like all other merchants who deal in highly-priced commodities, bill brokers require a large amount of funds wherewith to trade; this is formed by their own capital (often great), loans from bankers repayable at call or at short notice, and, in many cases, deposits received from the public. The business is now concentrated in thirteen institutions, all of which are limited companies. There are also three firms of running brokers (*q.v.*). Loans to brokers are essentially short-dated, the maximum period being seven days. The greater part of the money, however, is lent on a day to day basis, but this does not necessarily involve a daily disturbance of such accommodation. At time of writing (September, 1954) loan rates to the

discount market are 1¼ per cent against Treasury Bills, 1½ per cent against Bank Bills, and 1⅝ per cent against short-dated bonds.

BILL DIARY. In order that bills may not be overlooked, they are entered under their due dates in a diary. The entries in the diary are usually checked at intervals with the bill register to make sure that all bills have been included; the diary is also balanced periodically with the same book.

The diary may be divided into columns for different classes of bills, or, if numerous, a separate diary may be kept for each class.

BILL IN A SET. Foreign bills are usually drawn in several parts, and, for safety, the parts may be transmitted by separate mails. Where a bill is drawn in that way it is said to be drawn in a set, and the various parts constitute one bill.

The rules regarding a bill drawn in a set are dealt with in Section 71 of the Bills of Exchange Act, 1882, which is as follows—

"(1) Where a bill is drawn in a set, each part of the set being numbered, and containing a reference to the other parts, the whole of the parts constitute one bill.

"(2) Where the holder of a set indorses two or more parts to different persons, he is liable on every such part, and every indorser subsequent to him is liable on the part he has himself indorsed as if the said parts were separate bills.

"(3) Where two or more parts of a set are negotiated to different holders in due course, the holder whose title first accrues is as between such holders deemed the true owner of the bill; but nothing in this subsection shall affect the rights of a person who in due course accepts or pays the part first presented to him.

"(4) The acceptance may be written on any part, and it must be written on one part only. If the drawee accepts more than one part, and such accepted parts get into the hands of different holders in due course, he is liable on every such part as if it were a separate bill.

"(5) When the acceptor of a bill drawn in a set pays it without requiring the part bearing his acceptance to be delivered up to him, and that part at maturity is outstanding in the hands of a holder in due course, he is liable to the holder thereof.

"(6) Subject to the preceding rules, where any one part of a bill drawn in a set is discharged by payment or otherwise, the whole bill is discharged."

Where a bill is drawn in two parts, to save time one may be sent at once to the drawee for acceptance. The other part may be negotiated and contain a reference that the accepted part is in the possession of a certain firm, as "First and in need with Messrs. Blank & Co., London." If the bill is dishonoured, the agents named in the reference will, after it has been protested for non-payment, pay the bill for the honour of their principal.

A bill of lading is usually issued in a set, and each one is signed by some person authorised to sign the same on behalf of the shipowner, but he is liable only for one of them. As soon as one has been presented and the goods delivered, the others are void. But if the drawee of a bill of exchange accepts more parts than one, he is not discharged by paying one of them, but is liable on every such part. (See BILL OF LADING.)

The following is a specimen of a bill drawn in a set of three, though sets of three are not so often seen as formerly—

(*First part.*) Leeds, February 10, 19 .

£100.

Sixty days after sight pay this first of exchange (second and third of the same tenor and date unpaid) to the order of John Brown, the sum of one hundred pounds, value received, which place to account as advised.

JOHN JONES.

To Wm. Robinson, Esq.,
New York.

The *second part* is the same as the first part, except that "first of exchange" becomes "second of exchange" and the words in the parentheses become (first and third of the same tenor and date unpaid).

The *third part* is the same as the first and second parts, except that "first of exchange" becomes "second of exchange" and the words in the parentheses are (first and second of the same tenor and date unpaid).

Only one part of a set requires to be stamped. Upon proof of the loss or destruction of a duly stamped bill forming one of a set, any other bill of the set which has not been issued or in any manner negotiated apart from the lost or destroyed bill may, although unstamped, be admitted in evidence to prove the contents of the lost or destroyed bill (Section 39 of the Stamp Act, 1891). (See BILL OF EXCHANGE, FOREIGN BILL.)

In the case of bills of lading, no part of a set requires to be stamped.

BILL LEDGER. The same as Discount Ledger (*q.v.*).

BILL OF EXCHANGE. A bill of exchange is defined by the Bills of Exchange Act, 1882, Section 3, as follows—

"(1) A bill of exchange is an unconditional order in writing, addressed by one person to another, signed by the person giving it, requiring the person to whom it is addressed to pay on demand or at a fixed or determinable future time a sum certain in money to or to the order of a specified person, or to bearer.

"(2) An instrument which does not comply with these conditions, or which orders any act to be done in addition to the payment of money, is not a bill of exchange.

"(3) An order to pay out of a particular fund is not unconditional within the meaning of this Section; but an unqualified order to pay, coupled with (*a*) an indication of a particular fund out of which the drawee is to re-imburse himself or a particular account to be debited with the amount, or (*b*) a statement of the transaction which gives rise to the bill, is unconditional.

"(4) A bill is not invalid by reason—

(*a*) That it is not dated;

(*b*) That it does not specify the value given, or that any value has been given therefor;

(*c*) That it does not specify the place where it is drawn or the place where it is payable."

With regard to the sum payable, Section 9 provides that—

"(1) The sum payable by a bill is a sum certain within the meaning of this Act, although it is required to be paid—

(*a*) With interest.

(*b*) By stated instalments.

(*c*) By stated instalments, with a provision that upon default in payment of any instalment the whole shall become due.

(*d*) According to an indicated rate of exchange or according to a rate of exchange to be ascertained as directed by the bill.

"(2) Where the sum payable is expressed in words and also in figures, and there is a discrepancy between the two, the sum denoted by the words is the amount payable."

In *Cohn* v. *Boulken* (1920), 36 T.L.R. 767, where a cheque had been drawn for "7680 francs (Paris)," it was held to be a bill of exchange, being for a sum of money certain or which can be made certain within Section 9 (1) (*d*). (See above.) "The rate of exchange was sufficiently indicated on the face of the cheque. In any event the rate of exchange was sufficiently indicated by the practice of banking which had been proved." It was stated that the settled practice of bankers with cheques drawn in England on an English bank for an amount in French currency was to debit the drawer in sterling at the rate of exchange ruling on the day and at the hour of presentation, and to give the payee the equivalent in sterling. It was also held that the drawer cannot as between himself and an indorsee of the cheque set up an oral agreement between himself and the original payee that the rate of exchange should be that ruling at the date of the cheque. (See CHEQUE.) Where a bill is drawn payable in the United Kingdom in a foreign currency without stipulation as to the rate of exchange, a tender in payment of notes and coin in the currency of the bill is not a legal tender.

A bill may be written, printed, or typewritten.

There is no particular form prescribed by the Act, but bills are nearly always drawn in the same way. The following are specimens of the ordinary forms of bills of exchange—

Leeds, June 10, 19 .

Stamp 1s.

£100

Three months after date pay to {me or to my order / John Brown or order / bearer} the sum of one hundred pounds for value received.

JOHN JONES.

To Thomas Smith, Esq.,
24, River Street, London.

Leeds, June 10, 19 .

Stamp 2d.

£100

On demand pay to John Brown or order the sum of one hundred pounds for value received.

JOHN JONES.

To Wm. Robinson, Esq.,
London.

The first record of the use of bills of exchange in England is stated to be in a statute of 3 Rich. II, c. 3, in 1379. The original use of bills in this country appears to have been for the settlement of debts between merchants in England and those in another country. For example, where Brown in England owed money to Dumont in, say, France, he would draw a bill upon Hugo in that country, who happened to owe him money, requesting Hugo to pay the money to Dumont. In this way Brown paid his debt to Dumont without the necessity of sending gold from England to France.

It is said that bills were in common use in Venice as early as the thirteenth century, and that they were first used by the Florentines in the twelfth century. Inland bills were made legal in England in 1697.

The persons whose names appear upon a bill of exchange are the drawer, the drawee (who by accepting the bill becomes the acceptor), the payee (who may also be the drawer), and the indorser. These persons are called the parties to the bill. In addition there may also be the name of the banker at whose office the acceptor makes the bill payable, but he is not one of "the parties" to the bill.

The parties who are closely related, as the drawer and the acceptor, an indorser and the indorser immediately preceding him, are the "immediate parties." The parties who are not closely related, as the drawer and an indorsee, are the "remote parties."

A bill may be an inland bill (that is, one both drawn and payable within the British Islands, excluding Eire, or drawn within the British Islands upon some person resident therein), or a foreign bill (that is, one drawn otherwise than as an inland bill).

The holder of a bill of exchange may hold it till it is due and present it for payment himself; or he may negotiate the bill, that is, transfer it to another person; or he may leave it with his banker with a request that the bill be collected at maturity and the proceeds credited to his account; or he may take it to his banker, or to a bill broker, and after indorsing it have it discounted. By discounting a bill he receives at once the amount of the bill (which may not be payable by the acceptor for some months to come), less the amount charged for discounting it. The banker debits the amount of the bill to his bills discounted account and credits it, less the discount, to his customer's current account (or the customer's account may be credited with the full amount of the bill and debited with the discount), the discount passing to the credit of discount account, the balance of which account is periodically transferred to profit and loss account.

A bill drawn payable on a contingency, such as at a certain period after the arrival of a ship, is not valid.

It is very desirable that bills and cheques should be written in ink and not be typewritten, as instruments which are typewritten are too easily altered.

In Pitman's *Bills, Cheques and Notes* eight excellent pieces of advice are given with respect to bills of exchange. The hints are principally for traders, though some of them are specially applicable to bankers, but all of them should form part of a banker's creed with regard to those instruments. They are given as "practical hints which may serve as warnings"—

1. Never draw or accept an accommodation bill, unless you are prepared to meet it whenever called upon.
2. When a bill has been drawn by you, endeavour to secure its acceptance before negotiating it.
3. Unless you are to be personally liable upon the bill, take care that any signature you place upon it, whether as drawer, acceptor, or indorser, shows clearly that you are signing in a representative capacity.
4. Never indorse a bill without receiving value for it.
5. Never discount a bill for a stranger. Be sure that you know the person from whom you receive a bill and take care that he indorses it.
6. Examine the bill carefully.
7. If you are the holder, present the bill for acceptance, if it has not been accepted, and for payment at the proper time. If either acceptance or payment is refused, give notice at once to every indorser and to the drawer, so as to hold each and all liable for payment.
8. Upon payment of a bill take care that you get the document into your own possession.

STAMP DUTIES—

By the Finance Act, 1918, Section 36 (1) "Two pence shall be substituted for one penny as the stamp duty on all bills of exchange and promissory notes chargeable under the First Schedule to the Stamp Act, 1891, with duty at the rate of one penny and drawn on or after the first day of September, 1918, and two pence shall accordingly be substituted for one penny in Sections

8—(B.1535)

34 and 38 of the Stamp Act, 1891." This change affects: (*a*) all bills of exchange, including cheques and dividend warrants, payable on demand or at sight or on presentation, or not exceeding three days after date or sight; (*b*) all bills of exchange of any other kind, and all promissory notes of any kind whatever (drawn, or expressed to be payable, or actually paid, or indorsed, or in any manner negotiated in the United Kingdom), where the amount or value of the money for which the bill or note is drawn or made does not exceed £5. Under the First Schedule to the Stamp Act, 1891, as thus amended, the duty is—

BILL OF EXCHANGE—	£	s.	d.
Payable on demand or at sight or on presentation . .	0	0	2

And see Sections 32, 34, and 38, Stamp Act, 1891, given below.

This Schedule was extended by the Finance Act, 1899, Section 10 (2), to include bills payable at a period not exceeding three days after date or sight, the words "or within three days after date or sight" being added after the word "presentation." By Section 10 of the Revenue Act, 1909, Sections 34 and 38 of the Stamp Act were brought into agreement with the Schedule as altered in 1899: "The provisions in Sections 34 and 38 of the Stamp Act, 1891, which relate to bills of exchange payable on demand, or at sight, or on presentation, shall apply also to bills of exchange expressed to be payable at a period not exceeding three days after date or sight, which are chargeable with the duty of one penny under s.s. (2) of Section 10 of the Finance Act, 1899."

BILL OF EXCHANGE of any other kind whatsoever (*except a Bank Note*) and PROMISSORY NOTE of any kind whatsoever (*except a Bank Note*)—drawn, or expressed to be payable, or actually paid, or indorsed, or in any manner negotiated in the United Kingdom	£	s.	d.
Where the amount or value of the money for which the bill or note is drawn or made does not exceed £5 (increased from 1d. to 2d. as from 1st Sept., 1918. See Finance Act, 1918, Section 36, above)	0	0	2
Exceeds £5 and does not exceed £10	0	0	2
,, £10 ,, £25	0	0	3
,, £25 ,, £50	0	0	6
,, £50 ,, £75	0	0	9
,, £75 ,, £100	0	1	0
,, £100 ,, for every £100, and also for any fractional part of £100, of such amount or value . . .	0	1	0

[See Finance Act, 1899, below.]

Exemptions.

(1) Bill or note issued by the Bank of England or the Bank of Ireland.

(2) Draft or order drawn by any banker in the United Kingdom upon any other banker in the United Kingdom, not payable to bearer or to order, and used solely for the purpose of settling or clearing any account between such bankers.

(3) Letter written by a banker in the United Kingdom to any other banker in the United Kingdom, directing the payment of any sum of money, the same not being payable to bearer or to order, and such letter not being sent or delivered to the person to whom payment is to be made or to any person on his behalf.

(4) Letter of credit granted in the United Kingdom, authorising drafts to be drawn out of the United Kingdom payable in the United Kingdom.

(5) Draft or order drawn by the Paymaster-General on behalf of the Court of Chancery in England or by the Accountant-General of the Supreme Court of Judicature in Ireland.

(6) Warrant or order for the payment of any annuity granted by the National Debt Commissioners, or for the payment of any dividend or interest on any share in the Government or Parliamentary stocks or funds.

(7) Bill drawn by any person under the authority of the Admiralty, upon and payable by the Accountant-General of the Navy.

(8) Bill drawn (according to a form prescribed by Her Majesty's orders by any person duly authorised to draw the same) upon and payable out of any public account for any pay or allowance of the army or auxiliary forces or for any other expenditure connected therewith.

(9) Draft or order drawn upon any banker in the United Kingdom by an officer of a public department of the State for the payment of money out of a public account.

(10) Bill drawn in the United Kingdom for the sole purpose of remitting money to be placed to any account of public revenue. [It has been held that this applies only to money which is already public money.]

(11) Coupon or warrant for interest attached to and issued with any security, or with an agreement or memorandum for the renewal or extension of time for payment of a security.

By the Finance Act, 1894, Section 40, a coupon for interest on a marketable security, being one of a set of coupons whether issued with the security or subsequently issued in a sheet, is exempt.

A coupon attached to a scrip certificate is not exempt. See also the exemptions in the article CHEQUE.

By the Finance Act, 1899, Section 10, the duty on Bills of Exchange drawn and expressed to be payable out of the United Kingdom, when actually paid or indorsed or in any manner negotiated in the United Kingdom, shall, where the amount of the money for which the bill is drawn exceeds fifty pounds, be reduced so as to be—

Where the amount exceeds £50 and does not exceed £100, 6d.

Where the amount exceeds £100, 6d. for every £100, and also for any fractional part of £100 of that amount.

(Where the amount does not exceed £50, the duty is as in the Schedule above.)

The reduced rates in this Section are confined to bills which are actually drawn and payable out of the United Kingdom, and do not apply to bills which, though purporting to be drawn abroad, are actually drawn in this country. The latter require adhesive foreign bill stamps at the full rates.

For the purpose of stamp duty (see Section 36 below), a bill or promissory note which purports to be drawn or made out of the United Kingdom is treated as a foreign bill. The Isle of Man and the Channel Islands are out of the United Kingdom, and a bill drawn there and negotiated in the United Kingdom is therefore a foreign bill, so far as stamp duty is concerned. But under the Bills of Exchange Act, 1882 (Section 4), a bill drawn and payable within the British Islands (which include the Isle of Man and the Channel Islands) is an inland bill.

Since the establishment of the Irish Free State (Eire), that State is not included in the words "United Kingdom" or "British Islands." (See Statutory Order under IRELAND.)

On inland bills payable on demand, or at sight, or on presentation, or not exceeding three days after sight or date, and on cheques, the twopenny stamp may be either impressed or adhesive. In the case of inland bills payable otherwise, the stamp must be impressed. An adhesive stamp must be properly cancelled by the person signing the bill. (See Section 38 below.)

On foreign bills, the *ad valorem* duties are to be denoted by adhesive foreign bill stamps. If a bill drawn abroad is impressed with an English stamp it is not sufficient; it must have the correct adhesive stamp affixed If the bill is payable on demand or at sight, or not exceeding three days after date or sight, a twopenny postage stamp is the proper one to be used. The ordinary impressed stamp is also sufficient on cheques. Any person into whose hands any such bill comes before it is stamped must affix the proper stamp before dealing with the bill in any way. (See Section 35, below.)

A foreign debtor sometimes prepares a bill, accepts it, and forwards it to be completed by the creditor in England as drawer. If the bill is dated from a place abroad, it should be stamped by the drawer with an adhesive foreign bill stamp (see Section 36, below), but if it purports to be drawn from a place in the United Kingdom, the rules of the Inland Revenue authorities permit such a bill to be stamped with an impressed stamp before the drawer's signature is affixed, "provided it is presented for stamping within seven days of

its arrival in the United Kingdom and that it is accompanied by a written statement that no use has been made of it in the meantime." In the former case the bill must be drawn in accordance with the laws of the country in which it purports to have been drawn.

When a bill is drawn at sight and is accepted, say, at three months date, see under ACCEPTANCE, QUALIFIED, as to the stamp duty thereon. If a foreign bill drawn at, say, three months after date is paid in this country on presentation for acceptance it should be stamped as drawn, that is, with the *ad valorem* foreign bill stamp.

Where the bill chargeable with *ad valorem* duty is drawn in foreign money, the amount, for the purposes of stamping, is calculated according to the rate of exchange current on the date of the bill, unless the rate is stated in the bill. (Stamp Act, 1891, Section 6.) The rule for determining the amount that is payable on such a bill differs from the rule for stamping. (See Section 72 (4), Bills of Exchange Act, 1882, under FOREIGN BILL.)

If a bill is drawn for "£100 and interest at 5 per cent per annum" the bill requires to be stamped to cover only £100; but if drawn for "£100 and £5 as interest" the stamp must cover £105.

As to the duties upon promissory notes, see PROMISSORY NOTE.

The following sections are from the Stamp Act, 1891 (54 & 55 Vict. c. 39)—

"32. For the purposes of this Act the expression 'bill of exchange' includes draft, order, cheque, and letter of credit, and any document or writing (except a bank note) entitling or purporting to entitle any person, whether named therein or not, to payment by any other person of, or to draw upon any other person for, any sum of money; and the expression 'bill of exchange payable on demand' includes—

(*a*) An order for the payment of any sum of money by a bill of exchange or promissory note, or for the delivery of any bill of exchange or promissory note in satisfaction of any sum of money, or for the payment of any sum of money out of any particular fund which may or may not be available, or upon any condition or contingency which may or may not be performed or happen; and

(*b*) An order for the payment of any sum of money weekly, monthly, or at any other stated periods, and also an order for the payment by any person at any time after the date thereof of any sum of money, and sent or delivered by the person making the same to the person by whom the payment is to be made, and not to the person to whom the payment is to be made, or to any person on his behalf.

"33. (1) For the purposes of this Act the expression 'promissory note' includes any document or writing (except a bank note) containing a promise to pay any sum of money.

"(2) A note promising the payment of any sum of money out of any particular fund which may or may not be available, or upon any condition or contingency which may or may not be performed or happen, is to be deemed a promissory note for that sum of money.

"34. (1) The fixed duty of *two pence* [as amended by the Finance Act, 1918, see above] on a bill of exchange payable on demand or at sight or on presentation, *or at a period not exceeding three days after date or sight* [as amended by the Revenue Act, 1909, see above] may be denoted by an adhesive stamp, which, where the bill is drawn in the United Kingdom, is to be cancelled by the person by whom the bill is signed before he delivers it out of his hands, custody, or power.

"(2) The *ad valorem* duties upon bills of exchange and promissory notes drawn or made out of the United Kingdom are to be denoted by adhesive stamps.

"35. (1) Every person into whose hands any bill of exchange or promissory note drawn or made out of the United Kingdom, comes in the United Kingdom before it is stamped shall, before he presents for payment, or indorses, transfers, or in any manner negotiates, or pays the bill or note, affix thereto a proper adhesive stamp or proper adhesive

stamps of sufficient amount, and cancel every stamp so affixed thereto.

"(2) Provided as follows:

(*a*) If at the time when any such bill or note comes into the hands of any *bona fide* holder there is affixed thereto an adhesive stamp effectually cancelled, the stamp shall, so far as relates to the holder, be deemed to be duly cancelled, although it may not appear to have been affixed or cancelled by the proper person;

(*b*) If at the time when any such bill or note comes into the hands of any *bona fide* holder there is affixed thereto an adhesive stamp not duly cancelled, it shall be competent for the holder to cancel the stamp as if he were the person by whom it was affixed, and upon his so doing the bill or note shall be deemed duly stamped, and as valid and available as if the stamp had been cancelled by the person by whom it was affixed.

"(3) But neither of the foregoing provisos is to relieve any person from any fine or penalty incurred by him for not cancelling an adhesive stamp.

"36. A bill of exchange or promissory note which purports to be drawn or made out of the United Kingdom is, for the purpose of determining the mode in which the stamp duty thereon is to be denoted, to be deemed to have been so drawn or made, although it may in fact have been drawn or made within the United Kingdom.

"37. (1) Where a bill of exchange or promissory note has been written on material bearing an impressed stamp of sufficient amount but of improper denomination, it may be stamped with the proper stamp on payment of the duty, and a penalty of forty shillings if the bill or note be not then payable according to its tenor, or of ten pounds if the same be so payable.

"(2) Except as aforesaid, no bill of exchange or promissory note shall be stamped with an impressed stamp after the execution thereof.

"38. (1) Every person who issues, indorses, transfers, negotiates, presents for payment, or pays any bill of exchange or promissory note liable to duty and not being duly stamped shall incur a fine of ten pounds, and the person who takes or receives from any other person any such bill or note either in payment or as a security, or by purchase or otherwise, shall not be entitled to recover thereon, or to make the same available for any purpose whatever.

"(2) Provided that if any bill of exchange payable on demand or at sight or on presentation, *or at a period not exceeding three days after date or sight* [as amended by the Revenue Act, 1909, see above], is presented for payment unstamped, the person to whom it is presented may affix thereto an adhesive stamp of *two pence* [as amended by the Finance Act, 1918, see above], and cancel the same, as if he had been the drawer of the bill, and may thereupon pay the sum in the bill mentioned, and charge the duty in account against the person by whom the bill was drawn, or deduct the duty from the said sum, and the bill is, so far as respects the duty, to be deemed valid and available. ["The banker is the only person who can affix and cancel the stamp in the manner permitted by this subsection. A cheque drawn on unstamped paper, to which an intermediate holder had affixed an adhesive stamp and cancelled it, was held by Huddleston, B., to be invalid, in *Hobbs* v. *Cathie* (6 T.L.R. 292)." Alpe's *Law of Stamp Duties*. But as to a foreign bill payable on demand see Section 35.] [By the Finance Act, 1918, Section 36 (2): "The provisions of subsection (2) of Section 38 of the Stamp Act, 1891, shall apply so as to enable an adhesive penny stamp to be fixed on any bills of exchange to which that subsection applies being bills which are liable to a duty of twopence under this Section and are stamped only with a penny stamp, as they apply with respect to the fixing of a stamp on an unstamped bill."]

"(3) But the foregoing proviso is not to relieve any person from any fine or penalty incurred by him in relation to such bill.

"39. When a bill of exchange is drawn in a set according to the custom of merchants, and one of the set is duly stamped, the other or others of the set shall, unless issued or in some manner negotiated apart from the stamped bill, be exempt from duty; and upon proof of the loss or destruction of a duly stamped bill forming one of a set, any other bill of the set which has not been issued or in any manner negotiated apart from the lost or destroyed bill may, although unstamped, be admitted in evidence to prove the contents of the lost or destroyed bill."

If a receipt is placed upon a bill it requires a twopenny stamp (as from 1st September, 1920), but the name of a banker (whether accompanied by words of receipt or not) written in the ordinary course of his business as a banker upon a bill of exchange or promissory note duly stamped, is exempt. (See RECEIPT.)

A foreign bill which is both drawn and payable abroad does not require to be stamped in this country if received by a banker merely for acceptance and return; but if indorsed or negotiated in this country it must be stamped. See the following circular which was issued by the Board of Inland Revenue in May, 1907—

"The Board of Inland Revenue, having reason to believe that some misapprehension exists on the subject, desire to call attention to the fact that bills of exchange, although both drawn and expressed to be payable out of the United Kingdom, are nevertheless chargeable with stamp duty if 'actually paid, or indorsed, or in any manner negotiated in the United Kingdom.' (See BILL OF EXCHANGE, etc., in the first Schedule to the Stamp Act, 1891. See also Finance Act, 1899, Section 10.)

"The duty chargeable on a bill of this nature, if payable at a period exceeding three days after date or sight, is governed by the following scale—

"When the amount or value of the money for which the Bill is drawn does not exceed £5 [since 1st Sept., 1918] .	2d.
Exceeds £5 and does not exceed £10 .	2d.
,, £10 ,, ,, £25 .	3d.
,, £25 ,, ,, £100 .	6d.
and where the amount exceeds £100, for every £100, and also for any fractional part of £100 of that amount.	6d.

"The Board further desire to call attention to Section 38 (1) of the Act of 1891 which imposes a fine of £10 upon every person who issues, indorses, transfers, negotiates, presents for payment, or pays any bill of exchange liable to duty and not duly stamped."

With regard to the stamp duty on bills of exchange drawn in England and negotiated in Eire, or *vice versa*, a circular of the Board of Inland Revenue in 1923 states that "an instrument chargeable with stamp duty in both countries and stamped in either country will, to the extent of the duty it bears, be deemed to be stamped in the other country." Where a bill drawn in London on a person in Dublin and accepted payable in Dublin was stamped with the Irish impressed stamp, the Board of Inland Revenue said that "the bill of exchange, having been drawn and purporting to be drawn in England, should in their opinion have been drawn on paper bearing a British impressed stamp of the requisite amount. In its present condition therefore, it cannot, in their view, be regarded as duly stamped."

(See BILLS OF EXCHANGE ACT, 1882 (where a reference is given to the articles which include the various sections of the Act); ACCEPTANCE; ACCEPTANCE, GENERAL; ACCEPTANCE, QUALIFIED; ACCEPTANCE FOR HONOUR; ACCEPTOR, ACCOMMODATION BILL, AGENT, ALLONGE, ALTERATIONS, AMOUNT OF BILL OR CHEQUE, ANSWERS, ANTE-DATED, BEARER, BILLS FOR COLLECTION, BILL IN A SET, CANCELLATION OF BILL OF EXCHANGE, CHEQUE, CONSIDERATION FOR BILL OF EXCHANGE, DATE, DAYS OF GRACE, DELIVERY OF BILL, DISHONOUR OF BILL OF EXCHANGE, DOCUMENTARY BILL, DRAFT, DRAWEE, DRAWER, FOREIGN BILL, FORGERY, HOLDER FOR VALUE, HOLDER IN DUE COURSE, HOLDER OF BILL OF EXCHANGE, INCHOATE INSTRUMENT, INDORSEMENT, INDORSER, INLAND BILL, LOST BILL OF EXCHANGE, NEGOTIATION OF BILL OF EXCHANGE, NOTING, ORDER, OVERDUE BILL, PART PAYMENT, PARTIES TO BILL OF EXCHANGE, PAYEE, PAYING BANKER, PAYMENT BY, PAYMENT FOR HONOUR, PAYMENT OF BILL, POST-DATED, PRESENTMENT FOR ACCEPTANCE, PRESENTMENT FOR PAYMENT, PROMISSORY NOTE, PROTEST, REFEREE IN CASE OF NEED, RETIRING A BILL, SUPRA PROTEST, TIME OF PAYMENT OF BILL, TRANSFEROR BY DELIVERY, UNIFORM LAW.)

BILL OF LADING. A receipt for goods, upon shipment, signed by some person authorised to sign the same on behalf of the shipowner. The document states that the goods have been shipped in good order, and quotes the rate at which the freight is to be paid by the consignees. A note is usually made upon a bill of lading that the weight, quantity and quality of the cargo is unknown. The shipowner undertakes to deliver the goods at their destination in the same condition as they were when he received them.

Bills of lading are usually drawn in sets of three and, in addition, there are two copies. Of these "copies," one is given to the master and the other is retained by the loading brokers. The "copies" are of no value. Copy bills of lading are sometimes marked "Copy—not negotiable" to ensure that no confusion shall arise between the unsigned copies and the valid parts. One of the three stamped bills of lading is sent by the shipper to the consignee by one mail, and another is sent to him by another route, if possible, or by the following mail, and the third is retained by the shipper as evidence in support of a claim for insurance, in the event of the ship being lost, that the goods were in that ship. On the arrival of the ship at its destination, the consignee may, by handing the bill of lading to the master of the ship and paying all claims for freight and other charges, obtain possession of the goods. If the consignee wishes to transfer the goods to some other person, he can, by simply indorsing the bill of lading and delivering it to that person, constitute him the absolute owner of the goods. If such a transfer is made by the consignee in good faith and for value, the consignor's right to stop the goods in transit is cancelled. As a bill of lading is not a negotiable instrument, it follows that if the person who transfers it has no title or a defective title to the goods, the person to whom it is transferred obtains no better title than the transferor had. Lord Justice Scrutton, in his book on Charterparties, says: "Negotiable is a term which perhaps strictly should be reserved for instruments which may give to a transferee a better title than that possessed by his transferor. A bill of lading is not negotiable in this sense, the indorsee does not get a better title than his assignor." "The only case in which the indorsee gets more than the indorser has (whether it can be called 'a better title' is a nice question) is in the case where a previous vendor's right of stoppage *in transitu*, valid against the indorser, is not available against the indorsee."

As to a vendor's right of stoppage *in transitu*, see under FACTORS ACT, SALE OF GOODS ACT. Those Acts include a bill of lading under the expression "document of title."

In the United States, the Bills of Lading Act, 1916, makes all bills of lading, issued by any common carrier for the transportation of goods in the United States to a place in a foreign country, if to order, fully negotiable instruments.

During the time a cargo is at sea, the bill of lading is the symbol of the cargo, and "the indorsement and delivery of the bill of lading operate as a symbolical delivery of the cargo."

If the consignee's name is not inserted in the bill of lading, the ownership of the goods remains in the consignor. If a bill of lading is not drawn to "order or assigns" it is not assignable.

When the goods received on board are in good order and no adverse remarks, such as "boxes broken," etc., are made upon the bill of lading, it is called a clean bill of lading.

In *Evans* v. *J. Webster and Bros., Ltd.* (1928), 45 T.L.R. 136, the plaintiff, a shipowner, shipped timber for which he issued a clean bill of lading held by defendants as indorsees. The timber was delivered short and damaged. The defendants submitted that the statement in the bill of lading that the proper quantity of timber had been shipped in good order was conclusive evidence against the shipowner. The plaintiff replied that the clean bills of lading had been issued in reliance on a fraudulent statement by the shipper to the master that, unless he signed bills of lading in that form he would not get clearance, and that therefore the statements in the bill of lading were not binding on the shipowner. It was held that the plaintiff was estopped from disputing the statement in the bill of lading. Wright, J., said, "a shipowner should not be allowed to say that a bill of lading holder could not rely on the statement in the bill of lading unless the information in the possession of the bill of lading holder contradicting the statement was of at least as much weight as the statement itself. There might possibly be cases where the holder knew from independent knowledge that the bill of lading was inaccurate, but such cases must be rare."

As already stated, the master of the ship

delivers the goods to the person who presents the bill of lading, but if it should happen that two different purchasers have each received one of the bills of lading, the master is not liable if he delivers the goods to the purchaser who comes first with a bill of lading, provided, of course, he acts in good faith and has no notice of the conflicting claims. It will be noticed in the specimen, given below, of a bill of lading, that the master or purser affirms to two (or three, as the case may be) bills of lading, "one of which bills being accomplished, the others to stand void." It is therefore necessary, in order to have a complete security, that all the bills of lading should be held.

In addition to holding all the bills of lading, a "stop order" upon the goods may be lodged by the person about to make an advance upon them.

With regard to the three parts of a bill of lading Earl Cairns said in *Glyn & Co.* v. *The East and West India Dock Co.* (1882), 7 App. Cas. 591: "All that any person who advances money upon a bill of lading will have to do, if he sees, as he will see on the face of the bill of lading, that it has been signed in more parts than one, will be to require that all the parts are brought in—that is to say, that all the title deeds are brought in. I know that that is the practice with regard to other title deeds, and it strikes me with some surprise that any one would advance money upon a bill of lading without taking that course of requiring the delivery up of all the parts. If the person advancing the money does not choose to do that, another course which he may take is, to be vigilant and on the alert, and to take care that he is on the spot at the first arrival of the ship in the dock. If those who advance money on bills of lading do not adopt one or other of those courses, it appears to me that if they suffer, they suffer in consequence of their own act."

A banker who advances against wool (for example) which has been imported from abroad, may adopt the following course—he may take up the bills of lading and instruct the shippers to send the wool by rail to his order. He may then direct the railway company to deliver it to the combers, on his behalf, who will ascertain and advise the banker as to the various qualities and quantities "tops," "middles," "bottoms," etc., so that he may see what it will realise at present quotations. When the customer sells the wool, the banker then orders it to be delivered in accordance with the customer's instructions against payment of the purchase price.

By Section 19 (3), Sale of Goods Act, 1893: "Where the seller of goods draws on the buyer for the price, and transmits the bill of exchange and the bill of lading to the buyer together to secure acceptance or payment of the bill of exchange, the buyer is bound to return the bill of lading if he does not honour the bill of exchange, and if he wrongfully retains the bill of lading, the property in the goods does not pass to him."

Instead of sending bills of lading direct to the consignee, the consignor may draw a bill of exchange upon the consignee for the value of the goods dispatched and attach the bills of lading to the bill. Those documents may then be sent by the consignor's bankers to their correspondents in the town where the consignee lives, with a request to present the bill to the consignee for acceptance; and instructions are often given that the bills of lading may be handed to the consignee upon his accepting the bill. The consignee can then obtain the goods, sell them and be in a position to meet his acceptance at maturity.

Frequently the consignor draws a bill upon the consignee and discounts it at his bankers, pledging the indorsed bills of lading as security, and the banker has to send forward the bill to his correspondents to obtain the drawee's acceptance (see DOCUMENTARY BILL); or the consignor may, under instructions, draw upon the consignee's banker, the bills of lading being attached to the bill of exchange.

When bills of lading are given as security, a memorandum of deposit, or letter of lien (stamped 6d.) is taken, which provides that, in default of payment, the banker may sell the goods represented by the bills. In some cases, where an advance has been made upon bills of lading, the bills are handed to the borrower upon his signing a trust receipt. (See TRUST RECEIPT.)

Where a bill of lading is taken as security containing such a clause as "all conditions of every character as per Charter Party" (see below), the lender should ascertain what are the conditions in the Charter Party, as that document may reserve to the owners of the vessel the right of lien upon the cargo for payment of freight, demurrage and other charges.

A bill of lading pledged as security should be indorsed either in blank or to the banker, and be deposited, as stated above, under a letter of lien or hypothecation. To avoid

any liabilities that may attach to an indorser of the bill with respect to the goods, it is preferable for the banker to take it indorsed in blank. It has, however, been held by the House of Lords that, where a bill of lading is indorsed and pledged by way of security, a banker indorsee is not subject to the same liabilities in respect of the goods as a person to whom a bill of lading is indorsed upon a sale of the goods (*Sewell* v. *Burdick* (1884), 10 App. Cas. 74). But if the banker claims the goods in order to realise his security, he is then liable for the freight, warehouse charges, and all charges payable in accordance with the terms of the bill of lading. When the banker indorses and delivers the bill to a holder for value the banker's liability under the bill then ceases.

When a banker has claimed and received delivery of the goods, the addition of the words "without recourse" to his indorsement does not relieve him from liability under the bill of lading.

Where a transfer of a bill of lading takes place, upon a sale of the goods, Section 1 of the Bills of Lading Act, 1855, enacts—

"Every consignee of goods named in a bill of lading, and every indorsee of a bill of lading to whom the property in the goods therein mentioned shall pass, upon or by reason of such consignment or indorsement, shall have transferred to and vested in him all rights of suit, and be subject to the same liabilities in respect of such goods as if the contract contained in the bill of lading had been made with himself."

Where a banker, by instructions of a customer, accepts a bill drawn by a client of that customer against bills of lading, the banker will not be liable if the bills of lading should afterwards prove to be forgeries.

Along with the bill of lading there should be the insurance policy (see MARINE INSURANCE POLICY), and the detailed description of the goods in the policy should agree with that in the bill of lading.

A "Port Bill of Lading" is one which is signed by an authorised person after the goods have been received by that person at the port of shipment.

A "Through Bill of Lading" is one which provides (or ought to provide) for the continuous responsibility of several railway companies and shipping companies from one place to another. There should be attached to a through bill of lading a certificate by the railway company stating that the company's agent who signs the bill of lading is authorised to sign and verifying his signature.

A "Custody Bill of Lading" is a form created by the Bill of Lading Conference Committee in connection with the cotton trade, as announced in a circular dated 6th January, 1909. "This Bill of Lading may be issued after proper delivery of the cotton, but before arrival of the vessel in port." Within three weeks from its date a master's (or agent's) receipt is to be furnished proving the actual shipment of the cotton. A custody bill of lading is to be clearly marked as such, to distinguish it from a "Port Bill of Lading." It can be issued only by shipowners or loading agents who have signed a letter of agreement with the Conference Committee. (*Journal of Institute of Bankers*, February, 1909.)

A "Straight Bill of Lading" is an American term for "a bill in which it is stated that the goods are consigned or destined to a specified person." "A bill in which it is stated that the goods are consigned or destined to the order of any person named in such bill is an order bill." *The Journal of the Institute of Bankers*, May, 1920, points out that a straight bill of lading is not a document which can afford proper security to a banker or other person advancing money against it.

A "Berth Bill of Lading" is the term used to distinguish a bill of lading issued by a liner, or by a vessel trading under liner conditions, from a bill of lading issued by a vessel carrying cargo under a charter party.

At the International Conference on Maritime Law, held at Brussels in October, 1922, recommendations were made for the unification of certain Rules relating to bills of lading. At another meeting, in 1923, the Rules were amended. The Rules as so amended are set out, with modifications, in the Schedule to the Carriage of Goods by Sea Act, 1924, and by that Act given the force of law with a view to establishing the liabilities, rights, and immunities attaching to carriers under bills of lading.

The Act applies to carriage of goods by sea from any port in Great Britain or Northern Ireland to any other port, whether in or outside Great Britain or Northern Ireland. By Section 3 "Every bill of lading or similar document of title, issued in Great Britain or Northern Ireland, which contains or is evidence of any contract to which the Rules apply shall contain an express statement that it is to have effect subject to the provisions of the said Rules as applied by this Act."

The Rules provide, among other things, that after receiving the goods into his charge the carrier, or the master or agent of the carrier shall, on demand of the shipper, issue to the shipper a bill of lading showing—

(*a*) The leading marks necessary for identification of the goods;

(*b*) Either the number of packages or pieces, or the quantity, or weight, as the case may be, as furnished in writing by the shipper;

(*c*) The apparent order and condition of the goods.

Such a bill of lading shall be *prima facie* evidence of the receipt by the carrier of the goods.

After the goods are loaded the bill of lading to be issued by the carrier shall, if the shipper so demands, be a "shipped" bill of lading, provided that if the shipper shall have previously taken up any document of title to such goods, he shall surrender the same as against the issue of the "shipped" bill of lading, but at the option of the carrier such document of title may be noted at the port of shipment by the carrier with the name of the ship and the date of shipment, and when so noted it shall be deemed to constitute a "shipped" bill of lading.

The provisions of the Rules shall not be applicable to charter parties, but if bills of lading are issued in the case of a ship under a charter party they shall comply with the terms of the Rules. Nothing in the Rules shall be held to prevent the insertion in a bill of lading of any lawful provision regarding general average.

Any agreement in a contract of carriage relieving the carrier from liability under the Rules shall be null and void; but where goods are to be carried from a port in Great Britain or Northern Ireland to any other port in Great Britain or Northern Ireland or to a port in the Irish Free State a special agreement may be entered into as to the liability and rights of the carrier, provided that no bill of lading is issued and that the terms agreed are embodied in a non-negotiable receipt. (Section 4 of the Act and Article VI of the Schedule.)

A carrier shall not be liable for any loss exceeding £100 per package or unit, unless the nature and value of such goods have been declared by the shipper and inserted in the bill of lading.

Stamp duty on bills of lading was abolished by the Finance Act, 1949.

(See CHARTER PARTY, MATE'S RECEIPT.)

BILL OF SALE. An assignment of personal chattels as security for a debt. Personal chattels include goods, furniture, and other articles capable of complete transfer by delivery. Trade machinery is deemed to be personal chattels. (See definition, as given in Bills of Sale Act, 1878, of "personal chattels" under CHATTELS.) Bills of sale are very rarely taken by bankers as security.

A bill of sale may be absolute, or conditional by way of mortgage.

The registration of a bill of sale by a debtor should act as a danger signal to a banker.

Section 4 of the Bills of Sale Act, 1878, interprets the meaning of bill of sale as follows—

"The expression 'bill of sale' shall include bills of sale, assignments, transfers, declarations of trust without transfer, inventories of goods with receipt thereto attached, or receipts for purchase moneys of goods, and other assurances of personal chattels, and also powers of attorney, authorities, or licences to take possession of personal chattels as security for any debt, and also any agreement, whether intended or not to be followed by the execution of any other instrument, by which a right in equity to any personal chattels, or to any charge or security thereon, shall be conferred, but shall not include the following documents; that is to say, assignments for the benefit of the creditors of the person making or giving the same, marriage settlements, transfers, or assignments of any ship or vessel, or any share thereof, transfers of goods in the ordinary course of business of any trade or calling, bills of sale of goods in foreign parts or at sea, bills of lading, India warrants, warehouse-keepers' certificates, warrants or orders for the delivery of goods, or any other documents used in the ordinary course of business as proof of the possession or control of goods, or authorising or purporting to authorise, either by indorsement or by delivery, the possessor of such document to transfer or receive goods thereby represented."

The Bills of Sale Act does not apply to any debentures issued by any mortgage, loan or other incorporated company, and secured upon the capital stock or goods, chattels, and effects of such company (Section 17 of Bills of Sale Act (1878) Amendment Act, 1882). By the Companies Act, 1948, Section 95, a mortgage or charge, by a company, created or evidenced by an instrument which, if executed by an individual, would require registration as a bill of sale, must be registered with the registrar

of companies. (See REGISTRATION OF CHARGES.) A society incorporated under the Industrial and Provident Societies Act, 1893, is not an incorporated company within the exceptions in Section 17 of the Bills of Sale Act, 1882. (See the case under INDUSTRIAL AND PROVIDENT SOCIETIES.)

As to the avoidance of a general assignment of book debts unless registered as if it were a bill of sale, see Section 43, Bankruptcy Act, 1914, under DEBTS, ASSIGNMENT OF.

A bill of sale given by way of security for the payment of money by the grantor must be in accordance with the form given in the Schedule to the Bills of Sale Act (1878) Amendment Act, 1882. The following is the form given in that Schedule—

"This Indenture made the day of , between A B of of the one part and C D of of the other part, witnesseth that in consideration of the sum of £ now paid to A B by C D, the receipt of which the said A B hereby acknowledges [or whatever else the consideration may be], he the said A B doth hereby assign unto C D, his executors, administrators, and assigns, all and singular the several chattels and things specifically described in the Schedule hereto annexed by way of security for the payment of the sum of , and interest thereon at the rate of per cent per annum [or whatever else may be the rate]. And the said A B doth further agree and declare that he will duly pay to the said C D the principal sum aforesaid, together with the interest then due, by equal payments of £ on the day of [or whatever else may be the stipulated times or time of payment]. And the said A B doth also agree with the said C D that he will [here insert terms as to insurance, payment of rent, or otherwise, which the parties may agree to for the maintenance or defeasance of the security].

Provided always, that the chattels hereby assigned shall not be liable to seizure or to be taken possession of by the said C D for any cause other than those specified in Section 7 of the Bills of Sale Act (1878) Amendment Act, 1882.

In witness whereof the said A B hath hereunto set his hand and seal the day and year first above written.

A B

Signed and sealed by the said A B in the presence of me, E F

L. S.

[Add witness's name, address, and description.]"

The schedule must specifically describe the chattels which are assigned. It has been held, in the case of a bill of sale void because it was not drawn in accordance with the legal form, that the covenant in the bill to pay principal and interest was also void.

A bill of sale given in consideration of any sum under £30 shall be void (Section 12 of the above Act).

From the above form of bill of sale it will be seen that the amount which it is to secure must be a specified sum, and not, for example, a fluctuating balance.

A bill of sale must be registered at the Central Office of the Supreme Court within seven clear days after its execution; and requires re-registration once at least every five years. An assignment of a registered bill of sale does not require registration. Any person is entitled to search the register on payment of a fee of one shilling.

The grantee of a bill of sale may seize the chattels thereby assigned if the grantor makes default in payment of the sums secured by the instrument, or becomes bankrupt, or suffers any of the goods to be distrained for rent, rates, or taxes, or fraudulently removes any of the goods, or fails, without reasonable excuse, to produce to the grantee his last receipts for rent, rates and taxes, or if execution has been levied against the grantor's goods under any judgment at law (Section 7, Bills of Sale Act (1878), Amendment Act, 1882).

If two bills of sale are given upon the same property, priority is decided according to the order of the date of their registration.

A bill of sale by way of gift is void if the grantor becomes bankrupt within two years after the date, or at any time within ten years unless the claimants can prove that the grantor was solvent at the time he made the settlement. (See SETTLEMENTS, SETTLOR BANKRUPT.)

The Stamp Act, 1891, says—

BILL OF SALE—

Absolute. See CONVEYANCE ON SALE.

By way of security. See MORTGAGE, etc.

And see Section 41, as follows—

"A bill of sale is not to be registered under any Act for the time being in force relating to the registration of bills of sale unless the original, duly stamped, is produced to the proper officer."

BILL OF SALE, SHIP. A registered ship, or a share therein, is transferred to a purchaser by a bill of sale in the prescribed form

as required by the Merchant Shipping Act, 1894. (See SHIP.)

BILL REGISTER. The register contains a complete list of all bills which have been discounted. The following particulars are usually entered: Date when discounted and for whom, the drawer's and acceptor's names and place where domiciled, the date and amount of the bill, its currency and the date on which it is due. A column is also provided to show when the bill was remitted, and another to give the rate and amount of discount charged. Each entry in the register is usually numbered consecutively and the number written upon the bill. From the total of the bills so entered is deducted every night the amount of the bills which have matured during the day and the difference is the present amount under discount by the bank.

BILLON. Debased coin, due to the large proportion of alloy.

BILLS DISCOUNTED ACCOUNT. Bills of exchange which are discounted by a banker are debited to this account and credited to the customer's account, less the discount, the discount being passed into discount account. In some banks it is customary for branches to remit all bills to the head office, but if they are left at the branch they remain in bills discounted account until near maturity, when they are remitted for collection to the bank at which they are accepted payable.

BILLS DISCOUNTED BOOK. A list of all bills discounted is kept in this book and full particulars of each bill are given, e.g. date when discounted and for whom, the drawer's and acceptor's names, where and when payable, the amount, the currency, and the amount of discount received. In some banks the book is called the bill register. (See BILL REGISTER.)

BILLS DISCOUNTED LEDGER. (See DISCOUNT LEDGER.)

BILLS FOR COLLECTION. Bills left for collection (or "short bills," as they are sometimes called, a term which originated in the custom of entering the bills in the customer's account in a column "short" of the cash column) are bills which a customer leaves with his banker to be collected at maturity and of which the proceeds are to be credited to his account. Such bills may be entered to the credit of an account kept for bills received for collection and to the debit of a contra account, so that a proper record may be preserved. Bills for collection are also received from other bankers, frequently a day or two before maturity.

Where bills are paid to credit of an account and are neither discounted nor drawn against, the bills remain the property of the customer. If the account becomes overdrawn, the banker has a lien upon them to that extent. If the bills are discounted, they become the absolute property of the banker.

Bills left for collection, even if indorsed to the banker, do not form part of his assets, and if the banker becomes bankrupt the owner may, subject to any lien of the banker, recover the bills.

When bills sent by correspondents for collection are accompanied by instructions, such as, "Deliver documents against payment," "Incur no expense," "If unpaid do not protest," the instructions must be carefully attended to. Bankers usually keep a separate bill book in which particulars of bills for collection are entered. (See BILLS FOR COLLECTION BOOK.)

When a bill is sent out for collection, many bankers place the word "received" upon the back of the bill as a safeguard against the loss of the bill. A receipt by a banker upon a bill is exempt from stamp duty, but a receipt upon a bill by any other person is subject to the duty of twopence (see RECEIPT). (See BILL OF EXCHANGE.)

BILLS FOR COLLECTION BOOK. Bills which are left with a banker for collection (as distinguished from those which are discounted) are entered in this book, and all essential particulars of each bill should be given, e.g. date received and from whom, the drawer's and acceptor's names, where payable, the currency, the amount, when due, and when remitted.

BILLS OF EXCHANGE ACT, 1882 (45 & 46 VICT. c. 61). An Act to codify the law relating to bills of exchange, cheques, and promissory notes (August 18, 1882).

"Be it enacted by the Queen's most Excellent Majesty, by and with the advice and consent of the Lords Spiritual and Temporal, and Commons, in this present Parliament assembled, and by the authority of the same, as follows—

PART I

PRELIMINARY

"1. This Act may be cited as the Bills of Exchange Act, 1882.

"2. In this Act, unless the context otherwise requires—

'Acceptance' means an acceptance completed by delivery or notification.

'Action' includes counterclaim and set off.
'Banker' includes a body of persons whether incorporated or not who carry on the business of banking.
'Bankrupt' includes any person whose estate is vested in a trustee or assignee under the law for the time being in force relating to bankruptcy.
'Bearer' means the person in possession of a bill or note which is payable to bearer.
'Bill' means bill of exchange, and 'note' means promissory note.
'Delivery' means transfer of possession, actual or constructive, from one person to another.
'Holder' means the payee or indorsee of a bill or note who is in possession of it, or the bearer thereof.
'Indorsement' means an indorsement completed by delivery.
'Issue' means the first delivery of a bill or note, complete in form to a person who takes it as a holder.
'Person' includes a body of persons whether incorporated or not.
'Value' means valuable consideration.
'Written' includes printed, and 'writing' includes print."

The following sections have a special reference to the Act itself—

"92. Where, by this Act, the time limited for doing any act or thing is less than three days, in reckoning time, non-business days are excluded.

'Non-business days' for the purposes of this Act mean—

(*a*) Sunday, Good Friday, Christmas Day;
(*b*) A bank holiday under the Bank Holidays Act, 1871, or Acts amending it;
(*c*) A day appointed by Royal proclamation as a public fast or thanksgiving day.

Any other day is a business day.

"97. (1) The rules in bankruptcy relating to bills of exchange, promissory notes, and cheques, shall continue to apply thereto notwithstanding anything in this Act contained.

"(2) The rules of common law, including the law merchant, save in so far as they are inconsistent with the express provisions of this Act, shall continue to apply to bills of exchange, promissory notes, and cheques.

"(3) Nothing in this Act or in any repeal effected thereby shall affect—

"(*a*) The provisions of the Stamp Act, 1870, or Acts amending it or any law or enactment for the time being in force relating to the revenue.
"(*b*) The provisions of the Companies Act, 1862, or Acts amending it, or any Act relating to joint stock banks or companies;
"(*c*) The provisions of any Act relating to or confirming the privileges of the Bank of England or the Bank of Ireland respectively;
"(*d*) The validity of any usage relating to dividend warrants, or the indorsements thereof.

"98. Nothing in this Act or in any repeal effected thereby shall extend or restrict, or in any way alter or affect the law and practice in Scotland in regard to summary diligence.

"99. Where any Act or document refers to any enactment repealed by this Act, the Act or document shall be construed, and shall operate, as if it referred to the corresponding provisions of this Act.

"100. In any judicial proceeding in Scotland, any fact relating to a bill of exchange, bank cheque, or promissory note, which is relevant to any question of liability thereon, may be proved by parol evidence: Provided that this enactment shall not in any way affect the existing law and practice whereby the party who is, according to the tenor of any bill of exchange, bank cheque, or promissory note, debtor to the holder in the amount thereof, may be required, as a condition of obtaining a sist of diligence, or suspension of a charge, or threatened charge, to make such consignation, or to find such caution as the Court or judge before whom the cause is depending may require.

"This section shall not apply to any case where the bill of exchange, bank cheque, or promissory note has undergone the sesennial prescription."

All the other Sections of the Act will be found in the articles to which they refer.

BILLS OF EXCHANGE (CROSSED CHEQUES) ACT, 1906 (6 Edw. VII, c. 17). An Act to amend Section 82 of the Bills of Exchange Act, 1882 (August 4, 1906).

"Be it enacted by the King's most Excellent Majesty, by and with the advice and consent of the Lords Spiritual and Temporal, and Commons, in this present Parliament

PART I

PRELIMINARY

Section.

1. Short title . . . . . See above.
2. Interpretation of terms . . . . . ,, above.

PART II

BILLS OF EXCHANGE

Form and Interpretation

3. Bill of exchange defined . . . . . See BILL OF EXCHANGE.
4. Inland and foreign bills . . . . . ,, INLAND BILL & FOREIGN BILL.
5. Effect where different parties to bill are the same person . . . . . ,, DRAWER. ,, DRAWEE.
6. Address to drawee . . . . . ,, DRAWEE.
7. Certainty required as to payee . . . . . ,, PAYEE.
8. What bills are negotiable . . . s.s. 1, 2 ,, NEGOTIATION OF BILL OF EXCHANGE. s.s. 3 ,, BEARER. s.s. 4, 5 ,, ORDER.
9. Sum payable . . . . . s.s. 1, 2 ,, BILL OF EXCHANGE. s.s. 3 ,, INTEREST ON BILL.
10. Bill payable on demand . . . . . ,, TIME OF PAYMENT OF BILL.
11. Bill payable at a future time . . . . . ,, do.
12. Omission of date in bill payable after date . . ,, DATE.
13. Ante-dating and post-dating . . . . . ,, do.
14. Computation of time of payment . . . . ,, TIME OF PAYMENT OF BILL.
15. Case of need . . . . . ,, REFEREE IN CASE OF NEED.
16. Optional stipulations by drawer or indorser . ,, DRAWER.
17. Definition and requisites of acceptance . . ,, ACCEPTANCE.
18. Time for acceptance . . . . . ,, do.
19. General and qualified acceptances . . . ,, ACCEPTANCE, GENERAL. ,, do. QUALIFIED.
20. Inchoate instruments . . . . . ,, INCHOATE INSTRUMENT.
21. Delivery . . . . . ,, DELIVERY OF BILL.

Capacity and Authority of Parties

22. Capacity of parties . . . . . ,, See PARTIES TO BILL OF EXCHANGE.
23. Signature essential to liability . . . . ,, do.
24. Forged or unauthorised signature . . . ,, FORGERY.
25. Procuration signatures . . . . . ,, AGENT.
26. Person signing as agent or in representative capacity . . . . . ,, do.

The Consideration for a Bill

27. Value and holder for value . . s.s. 1 See CONSIDERATION FOR BILL OF EXCHANGE. s.s. 2, 3 ,, HOLDER FOR VALUE.
28. Accommodation bill or party . . . . ,, ACCOMMODATION BILL.
29. Holder in due course . . . . . ,, HOLDER IN DUE COURSE.
30. Presumption of value and good faith . . . ,, do.

Negotiation of Bills

31. Negotiation of bill . . . . . See NEGOTIATION OF BILL OF EXCHANGE.

Section.		
32.	Requisites of a valid indorsement	See INDORSEMENT.
33.	Conditional indorsement	,, do.
34.	Indorsement in blank and special indorsement	,, do.
35.	Restrictive indorsement	,, do.
36.	Negotiation of overdue or dishonoured bill	,, NEGOTIATION OF BILL OF EXCHANGE.
37.	Negotiation of bill to party already liable thereon	,, do.
38.	Rights of the holder	,, HOLDER IN DUE COURSE.

General Duties of the Holder

39.	When presentment for acceptance is necessary	See PRESENTMENT FOR ACCEPTANCE.
40.	Time for presenting bill payable after sight	,, do.
41.	Rules as to presentment for acceptance, and excuses for non-presentment	,, do.
42.	Non-acceptance	,, DISHONOUR OF BILL OF EXCHANGE.
43.	Dishonour by non-acceptance and its consequences	,, do.
44.	Duties as to qualified acceptances	,, ACCEPTANCE, QUALIFIED.
45.	Rules as to presentment for payment	,, PRESENTMENT FOR PAYMENT.
46.	Excuses for delay or non-presentment for payment	,, do.
47.	Dishonour by non-payment	,, DISHONOUR OF BILL OF EXCHANGE.
48.	Notice of dishonour and effect of non-notice	,, do.
49.	Rules as to notice of dishonour	,, do.
50.	Excuses for non-notice and delay	,, do.
51.	Noting or protest of bill	,, PROTEST.
52.	Duties of holder as regards drawee or acceptor	,, PRESENTMENT FOR PAYMENT.

Liabilities of Parties

53.	Funds in hands of drawee	See DRAWEE.
54.	Liability of acceptor.	,, ACCEPTANCE.
55.	Liability of drawer or indorser (s.s. 1 / s.s. 2)	,, DRAWER. / ,, INDORSER.
56.	Stranger signing bill liable as indorser	,, do.
57.	Measure of damages against parties to dishonoured bill	,, DISHONOUR OF BILL OF EXCHANGE.
58.	Transferor by delivery and transferee	,, TRANSFEROR BY DELIVERY.

Discharge of Bill

59.	Payment in due course	See PAYMENT OF BILL.
60.	Banker paying demand draft whereon indorsement is forged	,, do.
61.	Acceptor, the holder at maturity	,, do.
62.	Express waiver or renunciation	,, do.
63.	Cancellation	,, CANCELLATION OF BILL OF EXCHANGE.
64.	Alteration of bill	,, ALTERATIONS.

Acceptance and Payment for Honour

65.	Acceptance for honour suprà protest	See ACCEPTANCE FOR HONOUR.
66.	Liability of acceptor for honour	,, do.
67.	Presentment to acceptor for honour	,, PRESENTMENT FOR PAYMENT.
68.	Payment for honour suprà protest	,, PAYMENT FOR HONOUR.

Lost Instruments

Section.		
69.	Holder's right to duplicate of lost bill. . .	See LOST BILL OF EXCHANGE.
70.	Action on lost bill	,, do.

Bill in a Set

71.	Rules as to sets	See BILL IN A SET.

Conflict of Laws

72.	Rules where laws conflict	See FOREIGN BILL.

PART III

CHEQUES ON A BANKER

73.	Cheque defined	See CHEQUE.
74.	Presentment of cheque for payment . . .	,, PRESENTMENT FOR PAYMENT.
75.	Revocation of banker's authority . . .	,, PAYMENT OF CHEQUE.

Crossed Cheques

76.	General and special crossings defined . . .	See CROSSED CHEQUE.
77.	Crossing by drawer or after issue . . .	,, do.
78.	Crossing a material part of cheque . .	,, do.
79.	Duties of banker as to crossed cheques . .	,, do.
80.	Protection to banker and drawer where cheque is crossed	,, do.
81.	Effect of "not negotiable" crossing on holder .	,, do.
82.	Protection to collecting banker	,, do.

PART IV

PROMISSORY NOTES

83.	Promissory note defined	See PROMISSORY NOTE.
84.	Delivery necessary	,, do.
85.	Joint and several notes	,, do.
86.	Note payable on demand	,, PRESENTMENT FOR PAYMENT.
87.	Presentment of note for payment . . .	,, do.
88.	Liability of maker	,, PROMISSORY NOTE.
89.	Application of Part II to notes	,, do.

PART V

SUPPLEMENTARY

90.	Good faith	See GOOD FAITH.
91.	Signature by agent	,, AGENT.
92.	Computation of time	,, TIME OF PAYMENT OF BILL
93.	When noting equivalent to protest . . .	,, PROTEST.
94.	Protest when notary not accessible . . .	,, do.
95.	Dividend warrants may be crossed . . .	,, CROSSED CHEQUE.
96.	(Repealed by Statute Law Revision Act, 1898, 61 & 62 Vict. c. 22.)	
97.	Savings	,, above.
98.	Saving of summary diligence in Scotland . .	,, above.
99.	Construction with other Acts, etc. . . .	,, above.
100.	Parol evidence allowed in certain judicial proceedings in Scotland	,, above.
	Schedule 1. Form of protest	,, PROTEST.

assembled, and by the authority of the same, as follows—

"1. A banker receives payment of a crossed cheque for a customer within the meaning of Section 82 of the Bills of Exchange Act, 1882, notwithstanding that he credits his customer's account with the amount of the cheque before receiving payment thereof.

"2. This Act may be cited as the Bills of Exchange (Crossed Cheques) Act, 1906, and this Act and the Bills of Exchange Act, 1882, may be cited together as the Bills of Exchange Acts, 1882 and 1906."

The effect of this Act is to place a banker who credits the account of his customer with a cheque before he has collected it, in the same position as though he first of all collected the cheque and then placed the proceeds thereof to his customer's account. (See Section 82 of the Bills of Exchange Act, 1882, under CROSSED CHEQUE.)

BILLS OF EXCHANGE (TIME OF NOTING) ACT, 1917 (7 & 8 Geo. V, c. 48). An Act to amend the Bills of Exchange Act, 1882, with respect to the time for noting bills. (November 8, 1917.)

"Be it enacted by the King's most Excellent Majesty, by and with the advice and consent of the Lords Spiritual and Temporal, and Commons, in this present Parliament assembled, and by the authority of the same, as follows—

Time of Noting.

"1. In subsection 4 of Section 51 of the Bills of Exchange Act, 1882 (which relates to the time of noting a dishonoured bill), the words 'it must be noted on the day of its dishonour' shall be repealed, and the following words shall be substituted therefor, namely, 'it may be noted on the day of its dishonour and must be noted not later than the next succeeding business day.'

Short Title and Construction.

"2. This Act may be cited as the Bills of Exchange (Time of Noting) Act, 1917, and shall be construed as one with the Bills of Exchange Act, 1882, and the Bills of Exchange Acts, 1882 and 1906, and this Act may be cited together as the Bills of Exchange Acts, 1882 to 1917."

BILLS OF EXCHANGE ACT (1882) AMENDMENT ACT, 1932. An Act to amend the Bills of Exchange Act, 1882. (12th July, 1932.)

"Be it enacted by the King's most Excellent Majesty, by and with the advice and consent of the Lords Spiritual and Temporal, and Commons in this present Parliament assembled, and by the authority of the same, as follows—

"1. Sections seventy-six to eighty-two of the Bills of Exchange Act, 1882 (which relate to crossed cheques), as amended by the Bills of Exchange (Crossed Cheques) Act, 1906, shall apply to a banker's draft as if the draft were a cheque.

"For the purposes of this section, the expression 'banker's draft' means a draft payable on demand drawn by and on behalf of a bank upon itself, whether payable at the head office or some other office of the bank.

"2. This Act may be cited as the Bills of Exchange Act (1882) Amendment Act, 1932."

BILLS REMITTED BOOK. This book contains particulars of all bills dispatched to a banker's correspondents for collection; where the bills are very numerous, separate books may be kept, if necessary, for bills remitted to London, to branches, to head office, or to country correspondents.

BIMETALLISM. A double standard, of gold and silver, circulates gold and silver coins containing the full weight of metal represented by their face value. The fluctuating value of silver in relation to gold makes this a difficult system to control, and it was abandoned in England in 1816 after nearly a century of experiment, during which time chipped and debased coins drove out of circulation the full-weight coins; gold in particular was always worth melting down for sale as metal. This is unlike "Symmetallism," which is an amalgamated standard, combining units of gold and silver as the basis of the currency with no coins related only to one metal.

BIRMINGHAM MUNICIPAL BANK. (See MUNICIPAL BANK.)

BLACK BOURSE. When a government seeks to monopolise the purchase and sale of the national currency at rates fixed by itself, there may arise an outside or unofficial exchange market known as a Black Bourse. When the government is sufficiently strong it will suppress such unofficial dealings. (See EXCHANGE RESTRICTIONS.)

BLACK FRIDAY. 11th May, 1866, on which day the firm of bill brokers, Overend Gurney & Co., failed. There was a monetary panic in London, and to a large extent throughout the country.

BLACK MONEY. "Base coin brought to England by foreigners and prohibited by Edward III" (Dr. Brewer). When copper

money was first introduced into Scotland it was commonly called "black money."

BLANK CHEQUE. A cheque which is signed by the drawer without any amount being filled in. When such a cheque is issued, it is usually with the intention that the payee or some other authorised person should fill in an amount as sanctioned by the drawer. A blank cheque is an unsatisfactory document to give to anyone, as it might easily fall into the hands of some person who would make a wrong use of it. See the case of *London Joint Stock Bank, Ltd.* v. *Macmillan and Arthur* under ALTERATIONS.

BLANK INDORSEMENT. Where an indorsement on a bill of exchange specifies no indorsee, it is an indorsement in blank. A bill so indorsed becomes payable to bearer. The same term applies to the indorsement of cheques. Any holder may convert a blank indorsement into a special indorsement by writing above the indorser's signature a direction to pay the bill or cheque to, or to the order of, himself or some other person. (See INDORSEMENT.)

BLANK TRANSFER. A blank transfer of stock or shares is a transfer on which a material particular is lacking: the date is not, in this sense, a material particular. It is sometimes used when shares are given as security for a debt, the intention being that if default is made in payment the lender may fill in his own name, as transferee, or insert the date, and send the instrument forward for registration. If a blank transfer is to be held unstamped, it should not be dated, otherwise it cannot after thirty days from execution, be stamped except under a penalty.

A blank transfer, however, in those companies where the transfer must be under seal, is not a satisfactory security. In the case of *Powell* v. *London and Provincial Bank*, [1893] 2 Ch. 555, a stock certificate and a blank transfer were given to the bank as security. The bank subsequently inserted its own name in the transfer and executed it, and was duly registered by the company. Lord Justice Lindley said: ". . . in order to acquire the legal title to stock or shares in companies governed by the Companies Clauses Consolidation Act, 1845, you must have a deed executed by the transferor, and you must have that transfer registered. Until you have got *both* you have not got the legal title in the transferee. Now what took place here was this: Mr. Edwards gave to the bank a transfer sealed by him, and, so far as form goes, probably delivered by him to the bank, but with blanks. It was not in a complete form. It was never in that form in which such an instrument, however much wax there might be at the bottom, could amount to a deed by the transferor. We all know that both at common law and under these statutes if you execute a transfer in blank, that instrument with the blanks is not a deed. Then what happened is this. That document so executed by Edwards in blank was filled up afterwards by the bank, probably as was intended, and the bank itself was put in as the transferee and the bank got itself registered. . . . What was the effect of what had been done? It was not that the bank got a good title. The registration of the stock in the bank, unless preceded by a valid deed transferring the stock from the owner of it, does not give the transferee a good title at all. We have not to consider the effect of documents executed in blank as agreements enforceable in equity. We have nothing to do with that, but we are considering the legal title of the bank. The bank had no legal title at all." In that case the stock certificate proved to be part of a trust estate, and the bank, although it had no notice of the trust, had its title postponed to the prior equitable title of the persons interested under the trust.

In *France* v. *Clark* (1884), 50 L.T. 1, 26 Ch. Div. 256, the Court of Appeal held that a person who without inquiry takes from another an instrument signed in blank by a third party, and fills up the blank, cannot, even in the case of a negotiable instrument, claim the benefit of being a purchaser for value without notice, so as to acquire a greater right than the person from whom he himself received the instrument. In *Fry & Mason* v. *Smellie & Taylor* (1912), 106 L.T. 405, where a principal handed to his agent the documents of title to shares together with a transfer signed in blank, and gave the agent authority (though limited) to borrow thereon, and the agent borrowed in excess of his authority, the lender being ignorant of any limitation of the authority, it was held by the Court of Appeal that the principal could not take advantage of any limitation in point of amount which he placed upon the authority to raise money as against the lender who had no notice of it. Kennedy, L. J., said: "One of two innocent persons has to suffer by the misconduct of the agent; and the burden of loss ought in equity to fall upon him who intended his agent to obtain money from the other party, and clothed his agent

with an apparently unqualified authority to obtain the documents for that purpose."

In the case of those companies where debentures and shares are transferable by an instrument under hand (a deed under seal not being required), a blank transfer does form a satisfactory security, and the transferee's name can subsequently be filled in. In the event of the transferor's death, however, before the blanks are filled up, the banker's authority to do so is cancelled.

The reason why a blank transfer under seal cannot legally have any blanks subsequently filled in by a banker is that a document under seal is a deed and takes effect from its delivery. To enable a blank transfer under seal to be effectually completed, the blanks should be filled in in the presence of the transferor, or by his authority under seal, or the deed should be re-delivered by him. (See CERTIFICATE, TRANSFER OF SHARES.)

"BLANKET" BOND. A mortgage which does not create a charge merely on specific property, but covers everything.

BLOCKED CURRENCY. A currency of a country is said to be blocked when the government of that country creates categories of its currency that can be used only for purchases within the country. A further extension is seen when the government decrees that some of the blocked currency arising from particular transactions can be utilised only for certain specific purposes. This type of regulation was carried furthest in Germany during the Hitler régime, where there were numerous categories of "internal" marks, such as the Travelmark, which could only be used by visitors to Germany; the Askimark, which was used to pay for imports from certain South American States, such States having to spend such marks in the purchase of German manufactures.

The price of blocked currencies such as these is quoted at so much discount on the "free" currency, which itself tends in course of time to become little more than a book-keeping unit. (See EXCHANGE RESTRICTIONS.)

BODY CORPORATE. A number of persons which, by law, are formed into a corporation, which continues as a distinct body irrespective of any changes which may take place amongst the members. (See CORPORATION.)

BONA FIDE. Latin, in good faith. The opposite to *bona fide* is *mala fide*, in bad faith.

The Bills of Exchange Act, 1882, states that a thing is deemed to be done in good faith, within the meaning of the Act, where it is in fact done honestly, whether it is done negligently or not.

BOND. A bond is a document under seal whereby a person binds himself to pay a certain sum or to fulfil a certain contract. (See BEARER BONDS.)

For example, if Brown owes Jones £100, Brown may sign a bond for £200; that is, he binds himself for twice the actual amount intended to be secured, so as to cover principal, interest and all charges. The £200 is called the penalty, and the instrument usually continues: "Now the condition of the above written bond is such that if the above bounden Brown, his heirs, executors, or administrators shall pay unto the said Jones the sum of £100 by the instalments following , etc. . Then the above written bond shall be void, otherwise the same shall remain in full force."

BOND TO BEARER. (See BEARER BONDS.)

BOND AND DISPOSITION IN SECURITY. In Scotland, the method of obtaining a security over heritable (or real) property is by way of a deed, called a bond and disposition in security. The deed is a combination of a personal bond by the debtor and a conveyance of property by the debtor (or by a third party) in favour of the banker lending the money. The advance, however, must be made at once and in one amount. The bond must be registered in the Register of Sasines and priority is obtained according to the date of registration.

Though the personal obligation in the bond can be enforced for repayment of whatever debt is due by the debtor to the banker, any surplus there may be on realisation of the property, cannot be held for any other debt than that specified in the deed. (See CONSIGNATION RECEIPT.)

(See also Appendix on "Scottish Banking" under HERITABLE SECURITIES.)

BOND CERTIFICATE. A provisional certificate issued to a subscriber for a bearer bond. It is exchangeable for the bond when the bond is ready for delivery. The owner of the certificate is not entitled to receive the bond so long as any instalment or subscription is unpaid. (See SCRIP CERTIFICATE.)

A bond certificate is also the name of a certificate given to the holder of registered bonds, specifying that certain bonds have been registered in his name.

BOND OF CAUTION. In Scotland, an obligation by one person as surety for another. (See BOND OF CREDIT.)

BOND OF CREDIT. In Scotland, a bond of credit, or "cash credit bond," is a personal security for a "cash credit." A "cash credit" is a term peculiar to Scotland, being introduced by the Royal Bank of Scotland in 1728, and is equivalent to a personally secured overdraft in England. The debtor signs the bond, as well as the sureties, and they all acknowledge to have obtained the credit. To secure a cash credit to John Brown the document would begin: "We, John Brown and John Jones, having obtained a credit of one hundred pounds sterling with the Scots Bank on cash account in name of me, the said John Brown, do therefore hereby bind and oblige ourselves, our heirs, executors, and successors whatever, all conjunctly and severally to pay," etc. In many banks special ledgers were until recently kept for these cash credits, the ledger being referred to as the "Cash Account Ledger." The system is dying out as the cash credit bond is being replaced by the simple letter of guarantee.

BOND OF CREDIT AND DISPOSITION IN SECURITY. (See Appendix on "Scottish Banking" under HERITABLE SECURITIES.)

BONS. A name given to documents, such as French Treasury Bonds, upon which is printed the word "*bon*" in conjunction with the amount of the bond, e.g. "*Bon pour cent francs*," good for one hundred francs.

BONUS. The profits of an assurance company, which are distributed periodically to the policyholders, are called bonuses. Part of these "profits" arises from the unused portion of the "loading," as it is called; that is, the amount included in the premium rates specially to pay expenses. (See LIFE POLICY.)

The word is also applied to an extraordinary division of the profits of a company, in addition to the ordinary dividend.

When a bonus is paid as a temporary addition to a salary, the bonus is, for income tax purposes, regarded as part of the salary.

BONUS CERTIFICATE. On a division of profits by an insurance company a policy holder, who partakes in the profits, receives a bonus certificate from the company certifying that the sum of £.... has been added to and will be payable with the sum assured under the policy. A policy holder may, instead of having the bonus added to the policy, elect to have the bonus paid in cash or used to reduce the annual premium.

BONUS SHARES. The undivided profits of a company are sometimes capitalised and bonus shares issued to the shareholders.

In *Commissioners of Inland Revenue* v. *Blott* (1920), 36 T.L.R. 575, it was held that bonus shares issued by a company to shareholders, without the option of a cash payment instead, are not to be treated as income, but as capital, and that the respondent was not subject to super-tax on the amount of the bonus shares. This decision was affirmed by the House of Lords (1921), 37 T.L.R. 762.

Where there is an option to receive cash instead of shares it was held that the bonus shares are not subject to income tax (*Commissioners of Inland Revenue* v. *Wright*, 11 T.C. 181).

BOOK DEBTS. The item "book debts," which appears upon the balance sheet of a trader or a trading concern, represents the amount owing for goods sold, etc., as shown by the books. In considering such an item, it is necessary to ascertain whether the debts are owing merely by two or three individuals or firms, or are well spread over many debtors, and also to ascertain what proportion of the amount may be considered as good and likely to be paid, and what may be regarded as bad and what as doubtful. (See DEBTS, ASSIGNMENT OF.)

BOOK ENTRY. An entry passed through the books merely for purposes of adjustment.

BOOK VALUE. The value of a property as it appears in the books of a company. According to circumstances, a book value may be either more or less than the actual market value.

BOOKS. The books in use are not the same in all banks. The rulings and method of keeping them vary, and in some cases a book which is used for a certain purpose in one bank may, under the same name, be used for a different purpose in another bank. All the books of a bank, however, from the humblest to the most important, are required to be neatly and accurately kept, and each member of the staff is expected to take a pride in so keeping any books for which he is responsible that, in the event of the books being at any time produced in Court, they will not afford an opportunity to any one for adverse criticism Figures in ledgers, etc., should be called over day by day and all calculations be duly checked.

The following is a list of a number of the principal books in use (in some cases the same book appears under different names)

though they will not all be found in any one bank—

Acceptance Register.
Acceptance Ledger.
Acceptors' Ledger.
Accounts Opened and Closed Book.
Advice Book.
Attendance Book.
Balance Book.
Bank Note Register.
Bank Rate Book.
Bankers' Ledger.
Bearer Bonds Register.
Bill Diary.
Bill Ledger.
Bill Register.
Bills Discounted Book.
Bills for Collection Book.
Bills Remitted Book.
Branches Ledger.
Cash Balance Book.
Cash Book.
Check Ledger.
Cheque Book Register.
Circular Notes Book.
Clearing Book.
Coin Balance Book.
Common Seal Book.
Counter Cash Book.
Coupon Book.
Current Account Ledger.
Current Account Register.
Day Book.
Deposit Ledger.
Deposit Register.
Diaries.
Discount Cash Book.
Discount Day Book.
Discount Ledger.
Discount Register.
Dividend Register.
Draft Book.
Exchange Book.
General Ledger.
Investment Ledger.
Journal.
Key Register.
Letter Books.
Letters Dispatched Register.
Letters of Credit.
Letters Received Register.
Loans Ledger.
Loans Register.
London Agent's Ledger.
Minute Book.
Money Book.
Money Lent and Lodged Book.
Note Register (for own issue).
Opinion Book.
Overdue Bills Book.
Pass Book Register.
Postage Book.
Private Ledger.
Probate Register.
Record of Cheques Book.
Remittance Book.
Returned Bills.
Returned Cheques.
Safe Custody Register.
Securities Book.
Securities Journal.
Securities Ledger.
Shareholders' Ledger.
Shareholders' Register.
Short Bills Ledger.
Signature Book.
Staff Register.
Stock Exchange Transactions.
Teller's Cash Book.
Till Book.
Title Deeds Book.
Transfer Register.
Walks Book.
Waste Book.

BOROUGH COUNCILS. When a bank is appointed as banker to a borough council, a resolution under the seal of the council should be taken and the accounts opened in the name of the treasurer.

By Section 187 of the Local Government Act, 1933, all payments to and out of the General Rate Fund of a borough must be made to and by the borough treasurer and payments are made in pursuance of an order of the council signed by three members thereof and countersigned by the town clerk. The same order may include several payments, but certain payments may be made without an order. (See LOCAL AUTHORITIES.)

It is prudent to arrange for a countersignature to cheques as well as the signature of the borough treasurer.

All borrowings require Government sanction except those falling under Section 215 (*a*) of the Local Government Act, 1933, or money raised by mortgage of sewage works and plant. A resolution of the council should be obtained covering all borrowings. Metropolitan boroughs within the Administrative County of London, however, are outside the provisions of the Local Government Act, 1933. Metropolitan boroughs may, with the approval of the London County Council, borrow for street improvement purposes. There are also private Acts authorising special borrowings, but by Section 19 of the Metropolis Management Act, 1862, a lender is absolved from inquiry as to the regularity of borrowings by a borough council, the resolution under seal of the council being sufficient to cover the lender.

Temporary borrowings by Metropolitan borough councils are still governed by Section 3 of the Local Authorities (Financial Provisions) Act, 1921.

(See also LOCAL AUTHORITIES.)

BOROUGH ENGLISH. Abolished after 1925, this was a peculiar custom in connection with real property in certain old cities and boroughs, by which the property descended to the youngest son instead of to the eldest. (See INTESTACY.)

BORROWED NOTE. A name sometimes given to the agreement which is signed by a borrower when bearer bonds or registered securities are given by him as cover for a loan. The agreement gives the banker authority to sell the securities in the event of the loan not being repaid at the specified time, or of the stipulated margin on the securities not being maintained.

BORROWING POWERS. When a limited company applies for accommodation, a banker must satisfy himself, firstly, that a company has power to borrow; secondly, as to the methods of such borrowing; and, thirdly, as to the limit of borrowing. The power to borrow is usually expressly given in the objects clause of the memorandum of association. Trading companies have implied power to borrow, but nevertheless borrowing powers are invariably included in the objects clause of such companies.

As regards the method of borrowing, the articles of association generally put the exercise of the company's borrowing powers in the directors' hands either by a clause authorising them to exercise all such powers of the company as are not required by the articles or the Companies Act to be exercised by the general meeting (see Article 79 of Table A), or by a separate clause authorising them to borrow. Infrequently, however, it is provided that borrowing powers must be exercised by the company in general meeting.

As regards limits on borrowing, reference should, firstly, be made to the memorandum of association to see if it makes any reference thereto. If, as rarely happens, there is a limitation on the borrowing powers and the company exceeds such limit, the result may be serious for the lender, as such borrowing will be *ultra vires* the company and incapable of ratification.

In most cases, however, limitation is found in the articles; if nothing is said thereon, the regulations of Table A will apply and the borrowing powers will be limited to the amount of the company's issued capital. Table A of the 1948 Act, in Article 79, provides that in computing such borrowing, temporary loans obtained from a company's bankers in the ordinary course of business are excluded. A lender is not concerned to see or enquire if the limit is observed. If the powers prescribed in the articles are exceeded, the company in general meeting may ratify such excess. Where there are limited borrowing powers, it is desirable for accommodation to be taken by way of loan rather than by overdraft.

In reckoning the extent to which a company has availed itself of its borrowing powers, discounted bills and trade debts are excluded. Public companies may not exercise borrowing powers until they have received their certificate of authority to commence business. The receipt of application moneys for debentures is not a borrowing in this connection.

BOTTOMRY BOND. A document by which the master or captain of a ship charges or hypothecates the ship as security for the repayment of a loan. The circumstances under which such an instrument could be created are where the ship is in a foreign port and certain repairs are absolutely necessary in order to enable the ship to continue its voyage, and the captain has no other means of raising the money required to effect the repairs, and is unable to communicate with the owners. The money borrowed upon a bottomry bond is repayable only in the event of the ship reaching its destination. A lender must exercise the greatest care, as a captain has no authority to bind the ship-owner, except in case of necessity. (See RESPONDENTIA.)

BOUGHT NOTE. The contract note which is given by a stockbroker to his client, supplying particulars of a purchase which has been effected for him. (See CONTRACT NOTE.)

BOURSE. The name of the principal place in each country (or large town doing an active foreign trade) where the balance of trade between that country and others is settled by the mutual interchange of bills, and where merchants resort to buy and sell merchandise; they are international clearing-houses.

At a Bourse an exporter of goods to another country sells his draft, so getting payment for the goods exported; and it is there also that an importer goes to buy a draft (the same that the above exporter sells) which he remits to the foreign seller, so making payment for the goods imported.

In this country foreign bill business was, prior to 1921, done at the Royal Exchange, London.

On the continent, stock exchange business is also conducted at the Bourses.

BRANCH CLEARING. A department in the head office of a clearing bank, to which branches send cheques drawn upon other branches of the same bank. The cheques are sorted out by the department according to the branches on which the cheques are drawn and are sent by post to the respective branches on the evening of the day of receipt.

BRANCHES. For some purposes the branches of a bank are treated as though they were separate banks, e.g. one branch is not obliged to pay a cheque drawn upon another branch, and one branch may, in giving notice of dishonour, treat the other branch, in the matter of time, as a separate institution. On the other hand, branches are regarded as parts of one body in certain cases, e.g. a credit balance at one branch may be used to reduce an overdrawn account of the same customer at another branch; and where a customer has two accounts, one in credit at one branch and one overdrawn at another branch, and he presents a cheque at the branch with the credit balance, the banker is entitled, in considering whether he should pay the cheque, to regard the two accounts as one account, but if there has been an agreement, or the practice in the past has been to treat the two accounts as quite distinct, the banker could not, without due notice, suddenly change his method of dealing. A customer, however, has no right to demand that any accounts he may have at different branches be treated as one account with respect to cheques drawn. His cheque is (in the absence of express agreement) payable only at the branch on which drawn, and that branch may, if necessary, dishonour the cheque, even though

the customer may have sufficient funds at another branch.

It has been held that notice of the stopping of a cheque at one branch of a bank is not notice to the other branches. (See PAYMENT STOPPED.)

For most purposes the head office and branches are regarded as one body. It has been held that notice to the head office of an act of bankruptcy is equivalent to notice to the branches, allowing for reasonable time to communicate the notice to the branches. (See ACTS OF BANKRUPTCY.)

Service of a Garnishee Order *nisi* on the head office is service on the bank, but reasonable time to communicate with the branches must be allowed. (See GARNISHEE ORDER.)

Where a crossed cheque drawn on one branch is paid to credit of a customer's account at another branch of the same bank, the branches in such a case may be regarded either as one bank (in which case protection against a forged indorsement is obtained by Section 60 of the Bills of Exchange Act) or as practically two different banks, payment being made by one to the other (in which case the payment fulfils the requirements of Section 80).

A customer may pay in at any branch to his credit at the branch where he keeps his account, but the amount is not available to meet cheques until advice of the credit has been received. A bank may incur liability if a cheque is dishonoured at one branch consequent upon the neglect of another branch in dispatching promptly an advice of such credit.

A customer may also, as a rule, arrange to have his cheques cashed at other branches. In such a case the branch where his account is kept advises the branch where they are to be cashed to pay them up to a certain limited amount in any one day, or as may be desired, and furnishes at the same time a specimen of the drawer's signature. When a cheque drawn on one branch is paid, under advice, by another branch, it is considered that the bank obtains the protection of Section 60 of the Bills of Exchange Act. (See under PAYMENT OF CHEQUE.) But if a branch cashes a cheque on another branch, without an advice to do so, the former branch does not act in the matter of cashing it as the bank of the drawer and can rely only upon the credit of the person who presented it. (See STANDING CREDITS.)

A copy of the statement as prescribed by Section 105 (1) and Fifth Schedule of the Companies Act, 1948, must be exhibited in a conspicuous place in every branch. (See under BANKING COMPANY.)

BRANCHES LEDGER. This book is kept at the head office and contains an account for each branch of the bank, into which accounts are posted all the transactions between the branches and the head office. The transactions may be entered up with a certain amount of detail, or daily totals only may be shown. Each branch keeps an account in the general ledger with the head office, posted either in detail or by daily totals, and this account should agree with the account for the branch at head office in the branches ledger. If the head office balance at the branch is debit, the balance shown in the ledger at head office will be credit. In order to ascertain accurately the profit made by each branch it is necessary for the head office to allow interest on the balance standing to a branch's credit, or, on the other hand, to charge interest on the amount which head office may have lent to a branch.

When a balance sheet of the bank is prepared, the branches ledger balance is set off against the balances at the branches.

BRASSAGE. A charge which was made at one time by the Mint, to cover the expense of coining, when any one took gold bullion to be coined. The charge was abolished in 1666. (See MINT PRICE, SEIGNIORAGE, GOLD STANDARD ACT, 1925.)

BREACH OF TRUST. If a trustee acts contrary to the conditions in the deed or will under which he is appointed, or invests the trust funds in securities other than those authorised, or appointed by law, it is a breach of trust and he is personally liable.

By the Trustee Act, 1925, if it appears to the Court that a trustee is personally liable for any breach of trust, but has acted honestly and reasonably, and ought fairly to be excused for the breach, the Court may relieve him either wholly or partly from personal liability. (Section 61.)

The Court may authorise dealings with trust property which cannot be effected by trustees by reason of the absence of any power for that purpose in the trust instrument. (Section 57.) (See TRUSTEE, TRUSTEE INVESTMENTS.)

BREAKING AN ACCOUNT. (See BROKEN ACCOUNT.)

BRETTON WOODS. The name given to a conference of the United Nations held in 1944 at Bretton Woods, U.S.A. for the formulation of a post-war international financial policy. The two main problems it

considered were the provision of international machinery to ensure economic equilibrium, and the creation of stable currency and exchange conditions.

Its deliberations resulted in the establishment of an International Monetary Fund (*q.v.*) for establishing stable relations between currencies, and of an International Bank for Reconstruction and Development (*q.v.*) to enable former occupied countries to get finance for productive enterprises.

BRITISH BANKERS' ASSOCIATION. This Association was formed in December, 1919. Membership is confined to British banks whose main business and head office are situated in the United Kingdom, and British banks whose main business is outside the United Kingdom and who are members of the British Overseas Banks' Association.

The general committee of the Association is composed of the members of the Committee of London Clearing Bankers, ten members elected by the other English banks, four by the Scottish banks, three by the Irish banks, and five by the British Overseas Banks' Association.

BRITISH OVERSEAS BANKS' ASSOCIATION. This Association was formed in 1917, and has for its object the promotion of the general interests of the banks comprising the Association. Every British bank, approved by the general committee, carrying on business in the British Empire, and in other countries outside the British Empire, having a London office, is eligible for membership.

BROKEN ACCOUNT. An account is said to be "broken" when operations upon it are stopped, and all subsequent transactions are passed through a new account. This takes place, for example, upon the death of a surety, when a banker wishes to preserve his recourse against the estate of the deceased. Unless the debtor's account is broken, all payments to credit go to release the surety, and all debits form a fresh unsecured advance. A banker cannot break an account arbitrarily; the necessary circumstances must first have arisen. Whenever possible the written consent of the customer should be obtained to the opening of the new account. An account should also be broken on the bankruptcy or insanity of a guarantor. The following case shows the position where there was a loan account and an unbroken working current account and the bank had received notice of the insanity of a guarantor for the accounts.

In *Bradford Old Bank* v. *Sutcliffe* (1918), 119 L.T. 727, S. Sutcliffe & Co., Ltd., had two accounts at the bank, a loan account and a current account, and two of the directors of the company gave a personal guarantee for the amount due on the accounts. The bank received formal notice of the insanity of F. S., one of the guarantors. At that date the amount due on the loan account was £3,400 and on the current account £269 5s., and it was held in the Court below that the guarantee of F. S. ceased to operate as a continuing guarantee from that date, but that on that date the estate of F. S. remained liable for the debts then accrued on the two accounts. (Against this decision there was no appeal.) Both of the accounts were continued as before. As to the £3,400 due upon the loan account at the time when F. S. became a lunatic, A. T. Lawrence, J., held in the Court below that "it was an accrued liability from which his lunacy alone did not relieve him. The same would be true of the £269 5s. due upon the current account, but that account remained open and large sums were paid into and drawn out of it by the company, so that sometimes it was in credit and sometimes in debit. The £269 5s. was thus wiped out and paid by the payments in, according to the rule in Clayton's case." (From this part of the judgment there was no appeal.) The only question before the Court of Appeal was as to the liability for the £3,400 due on the loan account, and it was argued that this amount must also be held satisfied by subsequent payments into the current account exceeding the sum of £3,400, the ground of this argument being that the two accounts must be considered as one. Pickford, L. J., said: "I think there is no foundation for this argument. The facts clearly show that the accounts were to be kept distinct by arrangement between the plaintiffs and the company. . . . The effect of this arrangement is that payments to the credit of the current account are appropriated to that account and cannot be taken in reduction of the loan account."

The case of *Re Sherry* (see under GUARANTEE) was cited in support of the contention that the amounts paid into the current account must be appropriated generally in relief of the surety, in which case the loan account will have been paid off. Bankes, L.J., held that this contention cannot be supported. The accounts were kept and were intended to be quite distinct and "the surety cannot contend that as between himself and the bank, the latter ought to have applied moneys in discharge, or part discharge, of an account

to which the bank had no right to apply such moneys." (See "CLAYTON'S CASE," COLLATERAL SECURITY, NOTICE OF SECOND MORTGAGE, PARTNERSHIPS, WINDING UP.)

BROKERAGE. The charge of so much per cent or per share made by a broker for carrying out the instructions of a client to buy or sell stocks or shares. (See STOCK-BROKER.)

BROKERS. Persons who buy and sell goods, bills, stocks and shares, etc., on behalf of other persons. (See BILL BROKER, STOCK-BROKER.)

BROKER'S CONTRACT NOTE. (See CONTRACT NOTE—BROKER'S.)

BRONZE COINS. Bronze coins are issued by the Mint for a penny, half-penny and farthing. Copper coins (which were first issued in 1672) were replaced by bronze in 1860. They are still commonly called copper coins.

The composition of bronze is ninety-five parts of copper, four parts of tin, and one part of zinc.

Bronze coins are legal tender only to the extent of one shilling.

BUCKET SHOP. A term applied to a concern that is engaged in "share pushing" and similar doubtful business. (See SHARE PUSHING.)

BUDGET. The name given to the annual statement of the Chancellor of the Exchequer in which he estimates the revenue to be received during the year from existing taxes to meet the estimated expenditure. He may propose increased taxation if additional revenue is required, or if the estimated revenue is more than the estimated expenditure he may propose reduced taxation or indicate new schemes of the Government to utilise the excess revenue.

BUILDING AGREEMENT. A contract between the owner of land and a builder whereby the latter undertakes to build to certain strict specifications upon the land. In consideration thereof the owner of the land undertakes to grant a lease to the builder upon the completion of the buildings to specification. When advances are made against building agreements, a special form of mortgage is usually executed and notice of the bank's interest is given to the landowner. (See BUILDING LEASE.)

BUILDING LAND. Building land is, as a rule, one of the most unsatisfactory securities which can be offered to a banker. At the time the security is taken there may, perhaps, be a large demand for building land in the neighbourhood, but there is no guarantee that the demand will continue. In a very short time it may cease altogether, and, for various reasons, some other district be favoured for street extensions. If the property comes into the banker's hands, he may fail to find anyone to purchase it at anything like its original cost, and the longer it is held the less its value may become. The surrounding houses or works which have appeared since the security was taken may be objectionable, and no one will be inclined to build upon the land, and it may become practically worthless.

In considering the value of building land it should be noted whether any of the adjoining property owners have established any rights of light that would interfere with any buildings which might be contemplated for erection on the land.

BUILDING LEASE. The following exhibits the general form of a building lease—

This Indenture made the day of 19 Between hereinafter called the lessor of the first part and hereinafter called the lessee of the second part Witnesseth that in consideration of the rent hereinafter reserved and of the covenants and agreements hereinafter contained and by or on the part of the lessee to be paid and performed He the said lessor, etc.

Doth by this deed appoint and demise unto the lessee

All that piece or parcel of ground, etc.

Together with easements and appurtenances to the said piece of ground belonging,

To have and to hold the said piece of ground unto the lessee from the 1st day of March, 19 , for the term of 99 years

Yielding and paying therefor yearly and every year during the term hereby limited the yearly rent of pounds free from all taxes, save only the landlord's income tax.

And the lessee covenants

That the lessee will duly pay the said yearly rent, and all taxes,

And also that the lessee will within months from the date hereof erect dwelling houses upon the said ground to the reasonable satisfaction of the said lessor,

And also keep in good and substantial order and repair the said dwelling houses,

And in such good and substantial order and repair will on the expiration of the

determination of the term hereby limited peaceably yield and deliver the same premises to the lessor,

And the lessee will insure the said dwelling houses,

Provided always and it is hereby agreed and declared that in case the said yearly rent of or any half-yearly payment shall be in arrear for the space of days, or in case the lessee or his sub-lessees shall not faithfully keep all the agreements and covenants in these presents contained, it shall be lawful for the lessor to re-enter upon the said ground and dwelling houses and the lessee and sub-lessees to expel and remove.

And the lessor covenants with the lessee that the lessee paying the yearly rent and observing the covenants and agreements shall peaceably hold and enjoy the said premises during the time hereby limited.

A building lease is usually granted for 99 years. In cases where the period is 999 years, it is practically equal to a freehold. (See LEASEHOLD.)

BUILDING SOCIETY. All societies formed under the Building Societies Acts, 1874 to 1894, must obtain a certificate of incorporation from the Registrar of Friendly Societies.

These incorporated societies are to be distinguished from an unincorporated society formed under the Act of 1836, and which has not since obtained a certificate of incorporation under the 1874 to 1894 Acts.

A terminating society means a society which by its rules is to terminate at a fixed date, or when a result specified in its rules is attained; a permanent society means a society which has not by its rules any such fixed date or specified result at which it shall terminate.

With respect to incorporated societies, the Building Societies Act, 1874 (37 & 38 Vict. c. 42), provides as follows—

"Section 15. With respect to the borrowing of money by societies under this Act, the following provisions shall have effect:

"(1) Any society under this Act may receive deposits or loans, at interest, within the limits in this Section provided, from the members or other persons, or from corporate bodies, joint stock companies, or from any terminating building society, to be applied to the purposes of the society:

"(2) In a permanent society the total amount so received on deposit or loan and not repaid by the society shall not at any time exceed two-thirds of the amount for the time being secured to the society by mortgages from its members.

"(3) In a terminating society the total amount so received and not repaid may either be a sum not exceeding such two-thirds as aforesaid, or a sum not exceeding twelve months' subscriptions on the shares for the time being in force:

"(4) Any deposits with or loans to a society under this Act, made before the commencement of this Act in accordance with its certified rules, are hereby declared to be valid and binding on the society, but no further deposits or loans shall be received by such society, except within the limits provided by this section:

"(5) Every deposit book or acknowledgment or security of any kind given for a deposit or loan by a society shall have printed or written therein or thereon the whole of the fourteenth and fifteenth Sections of the present Act."

An overdraft to a building society is a loan within the meaning of the above Section.

By the 1894 Act, Section 14, the two-thirds mentioned in the above Section must not include mortgages where, at the date of the last balance sheet, payments were upwards of twelve months in arrears, or mortgages where the society had then been in possession for twelve months.

By the 1874 Act, Section 14. "The liability of any member of any society under this Act in respect of any share upon which no advance has been made shall be limited to the amount actually paid or in arrear on such share, and in respect of any share upon which an advance has been made shall be limited to the amount payable thereon under any mortgage or other security or under the rules of the society."

Part of Section 43 is as follows—

"If any society under this Act receives loans or deposits in excess of the limits prescribed by this Act, the directors or committee of management of such society receiving such loans or deposits on its behalf shall be personally liable for the amount so received in excess."

In *Chapleo and Wife* v. *Brunswick Permanent Building Society and Others* (1881),

6 Q.B.D. 696, Bagallay, L.J., in the course of his judgment, said: "Persons who deal with corporations and societies that owe their constitution to or have their powers defined or limited by Acts of Parliament, or are regulated by deeds of settlement or rules, deriving their effect more or less from Acts of Parliament, are bound to know or to ascertain for themselves the nature of the constitution, and the extent of the powers of the corporation or society with which they deal. The plaintiffs and every one else who have dealings with a building society are bound to know that such a society has no power of borrowing, except such as is conferred upon it by its rules, and if in dealing with such a society they neglect or fail to ascertain whether it has the power of borrowing, or whether any limited power it may have has been exceeded, they must take the consequences of their carelessness."

A society registered under the Act of 1836 and not incorporated under the Act of 1874 has no power of borrowing unless authorised by its rules. Section 1 of the 1894 Act provides that the rules of every society under the Building Societies Acts established or substituting a new set of rules for the existing rules after the passing of this Act shall set forth whether the society intends to borrow money, and, if so, within what limits, not exceeding those prescribed by the Building Societies Acts. The 1894 Act (Section 28) repealed a somewhat similar provision in the 1874 Act, Section 16, paragraph 2, which enacted that the rules should set forth whether the society intends to avail itself of the borrowing powers contained in this Act, and, if so, within what limits, not exceeding the limits prescribed by this Act. Therefore, where an advance is required by a building society, its rules should be carefully perused to ascertain (1) if the society has power to borrow, and to what extent; (2) if it has power to mortgage or pledge. If the society has such powers, it is necessary to see that such powers are not exceeded. The security for a loan is effected by deposit of the members' mortgages.

An advance to a building society should, preferably, be made upon a separate loan account, and not upon the ordinary current account, so that the danger of making advances in excess of the society's powers to borrow may be avoided.

All cheques should be signed in accordance with the rules of the society. A copy of the resolution with regard to the opening of the account, and specimens of the signatures of the persons authorised to sign should be supplied to the banker.

By Section 41 of the Building Societies Act, 1874—

"No rules of any society under this Act, nor any copy thereof, nor any power, warrant, or letter of attorney, granted or to be granted by any person as trustee for the society for the transfer of any share in the public funds standing in his name, nor any receipts given for any dividend in any public stock or fund, or interest of Exchequer bills, nor any receipt, nor any entry in any book of receipt, for money deposited in the funds of the society, nor for any money received by any member, his executors or administrators, assigns, or attorneys, from the funds of the society, nor any transfer of any share, nor any bond or other security to be given to or on account of the society, or by any officer thereof, nor any order on any officer for payment of money to any member, nor any appointment of any agent, nor any certificate or other instrument for the revocation of any such appointment, nor any other instrument or document whatever required or authorised to be given, issued, signed, made, or produced in pursuance of this Act, or of the rules of the society, shall be subject or liable to or charged with any stamp duty or duties whatsoever, provided that the exemption shall not extend to any mortgage."

With regard to cheques drawn by building societies, the exemption from stamp duty contained in the above Section applies—

(1) When the bankers on whom the cheques are drawn are, by the rules of the society, constituted "officers" of the society, and

(2) When it is further directed by the rules that payments are to be made by means of cheques, and

(3) When the cheques are payable to members of the society as such.

Cheques drawn by the society in favour of non-members are not exempt.

Bankers who are constituted "officers" of a society should be indemnified by the society from all losses, costs, expenses, etc., which they may incur in the execution of the office, and not be answerable for any act or default of any other officer, or for the insufficiency of any security taken for the repayment of any advance.

Receipts for any money deposited in the funds of a society are exempt from stamp duty, and this is regarded as extending to receipts given to members for sums paid in

respect of advances made to them in the regular course of the business of the society. This exemption does not apply to receipts given to persons who are not members of the society. The liability of receipts on the backs of cheques is the same as that of other receipts.

When a mortgage to a building society is repaid, the society has power to indorse a receipt for the money upon the mortgage deed. The effect of such a receipt is to "vacate the mortgage," that is, it operates as a re-conveyance to the mortgagor. By the Law of Property Act, 1925, the provisions of the Act relating to the operation of a receipt shall (in substitution for the like statutory provisions relating to receipts given by a building society) apply to the discharge of a mortgage made to the society, provided the receipt is executed in the manner required by the statute relating to the society. (Section 115 (9).) A receipt must state the name of the person who pays the money (1).) The exemption of a building society from stamp duty on such a receipt is not affected by the Act.

With respect to unincorporated societies, by Section 89 of the Stamp Act, 1891, the exemption from stamp duty conferred by the Building Societies Act, 1836, 6 & 7 Will. IV, c. 32, for the regulation of benefit building societies shall not extend to any mortgage made after 31st July, 1868, except a mortgage by a member of a benefit building society for securing the repayment to the society of money not exceeding £500. (See SUBROGATION.)

BUILDING SOCIETY DEPOSITS. These may become an effective security for money lent if an assignment thereof is taken under hand stamped at the rate of 2s. 6d. per cent on the amount involved. Notice of assignment should be given to the society and acknowledged, and it should be ascertained if the society has received any prior notices of assignment and if the society claims a lien or set-off on the deposit.

The deposit receipt or pass book should be obtained together with a signed notice of withdrawal and authority to pay the money to the bank.

BUILDING SOCIETY SHARES. These may be effectively charged as security for an advance by a memorandum of deposit, together with the relative certificate or pass book. A signed notice of withdrawal should be taken and an authority for the society to pay the money to the bank. Notice should be given to the society in duplicate asking the society to state if any prior notices have been received, whether notice of withdrawal has been given by the shareholder, and if the society claims a lien or set-off in respect of any sums due to it. In some cases societies will not recognise charges and then the question of transfer into the name of the bank's nominee arises. Some societies object to registering limited companies as shareholders owing to income tax difficulties.

BULL AND BEAR. Names given to the two kinds of speculators on a stock exchange.

A bull is one who anticipates a rise in a certain stock; he therefore buys in, not intending to pay for the purchase but hoping to sell out later at a profit.

A bear, on the other hand, expects a certain security to fall in price, so he sells stock which he does not possess, with the object of buying in before settling day at a lower figure, in which case the difference would be his profit. (See BACKWARDATION, CONTANGO, STOCK EXCHANGE.)

BULLION. Gold and silver in bars or in the mass. The word is also used when speaking of large quantities of gold and silver coins, especially when regarded by weight.

Bullion is said to have been originally the name of the office or mint where the metal was stamped into coins.

By the Bank Charter Act, 1844, Section 4, "all persons shall be entitled to demand from the Issue Department of the Bank of England, Bank of England notes in exchange for gold bullion, at the rate of £3 17s. 9d. per ounce of standard gold: Provided always that the said Governor and Company shall in all cases be entitled to require such gold bullion to be melted and assayed by persons approved by the said Governor and Company at the expense of the parties tendering such gold bullion."

Under the Coinage Act of 1870, anyone had the right to take bar gold, if of sufficient fineness, to the Mint and have it coined, free of expense, at the rate of £3 17s. 10½d. per ounce of standard gold, provided that the value was not less than £20,000, but the owner of the gold bullion had to wait for payment until it was coined. Anyone requiring coins for gold bullion would take it to the Bank of England, where, as stated above, notes at the rate of £3 17s. 9d. per ounce will be given at once.

By the Gold Standard Act, 1925, the Section of the Coinage Act, 1870, which enabled any person bringing gold bullion to

the Mint to have it assayed and coined, shall, except as respects gold bullion brought to the Mint by the Bank of England, cease to have effect. The right to tender bullion to be coined is thus confined by law, as it has long been confined in practice, to the Bank of England. The same Act puts the Bank of England under the obligation to sell gold bullion, in amount not less than 400 fine ounces, in exchange for legal tender at the fixed price of £3 17s. 10½d. per standard ounce. Subsection (2) of Section 1 of the Gold Standard Act, 1925, was suspended on 21st September, 1931, relieving the Bank of England from the obligation to sell gold bullion. (See BAR GOLD, GOLD STANDARD ACT, 1925.)

BULLION POINTS. The same as "Specie Points" (*q.v.*).

BUSINESS NAMES. See REGISTRATION OF BUSINESS NAMES.

BUYING IN. A Stock Exchange term. Where securities have not been delivered by a seller to a purchaser at the appointed time, they may be "bought in" by an official of the Stock Exchange. In the case of registered securities, if not delivered within ten days they may be bought in against the seller on the eleventh day after the Ticket-day, or on any subsequent day, and the loss occasioned by such buying in must be borne by the seller. (See SELLING OUT, STOCK EXCHANGE.)

CABLE TRANSFER. See TELEGRAPHIC TRANSFERS.

CALENDAR. From the following tables the day of the week for any date from 1900 till 1950 can easily be ascertained. The one table contains ordinary years, the other table leap years.

Jan. Oct.	May	Aug.	Feb. Mar. Nov.	June	Sept. Dec.	April July	1905 1911 1922	1933 1939 1950
April July	Jan. Oct.	May	Aug.	Feb. Mar. Nov.	June	Sept. Dec.	1900 1906 1917	1923 1934 1945
Sept. Dec.	April July	Jan. Oct.	May	Aug.	Feb. Mar. Nov.	June	1901 1907 1918	1929 1935 1946
June	Sept. Dec.	April July	Jan. Oct.	May	Aug.	Feb. Mar. Nov.	1902 1913 1919	1930 1941 1947
Feb. Mar. Nov.	June	Sept. Dec.	April July	Jan. Oct.	May	Aug.	1903 1914 1925	1931 1942
Aug.	Feb. Mar. Nov.	June	Sept. Dec.	April July	Jan. Oct.	May	1909 1915 1926	1937 1943
May	Aug.	Feb. Mar. Nov.	June	Sept. Dec.	April July	Jan. Oct.	1910 1921 1927	1938 1949
Sun. M. Tu. W. Th. F. Sat.	M. Tu. W. Th. F. Sat. Sun.	Tu. W. Th. F. Sat. Sun. M.	W. Th. F. Sat. Sun. M. Tu.	Th. F. Sat. Sun. M. Tu. W.	F. Sat. Sun. M. Tu. W. Th.	Sat. Sun. M. Tu. W. Th. F.	1 8 15 22 29 2 9 16 23 30 3 10 17 24 31 4 11 18 25 5 12 19 26 6 13 20 27 7 14 21 28	

LEAP YEARS

Jan. April July	Oct.	May	Feb. Aug.	Mar. Nov.	June	Sept. Dec.	1928	
Sept. Dec.	Jan. April July	Oct.	May	Feb. Aug.	Mar. Nov.	June	1912 1940	
June	Sept. Dec.	Jan. April July	Oct.	May	Feb. Aug.	Mar. Nov.	1924	
Mar. Nov.	June	Sept. Dec.	Jan. April July	Oct.	May	Feb. Aug.	1908 1936	
Feb. Aug.	Mar. Nov.	June	Sept. Dec.	Jan. April July	Oct.	May	1920 1948	
May	Feb. Aug.	Mar. Nov.	June	Sept. Dec.	Jan. April July	Oct.	1904 1932	
Oct.	May	Feb. Aug.	Mar. Nov.	June	Sept. Dec.	Jan. April July	1916 1944	
Sun. M. Tu. W. Th. F. Sat.	M. Tu. W. Th. F. Sat. Sun.	Tu. W. Th. F. Sat. Sun. M.	W. Th. F. Sat. Sun. M. Tu.	Th. F. Sat. Sun. M. Tu. W.	F. Sat. Sun. M. Tu. W. Th.	Sat. Sun. M. Tu. W. Th. F.	1 8 15 22 29 2 9 16 23 30 3 10 17 24 31 4 11 18 25 5 12 19 26 6 13 20 27 7 14 21 28	

If, for instance, it is required to know what day of the week 13th March, 1900, was, find the year 1900 in the year column, then look to the left to find the month of March, and at the bottom of the column containing that month will be found the day of the week, Tuesday, in a line with the 13th on the right.

CALL. A Stock Exchange term meaning the right to buy a specified security at a certain price within an arranged period. (See OPTIONS, STOCK EXCHANGE.)

CALL MONEY. (See MONEY AT CALL AND SHORT NOTICE.)

CALL RATE. The rate of interest allowed on deposits repayable at call and not subject to notice.

The London Joint Stock Bank call rate was usually ½ per cent less than the rate for deposits at notice. At the present time (September, 1954) the call rate is from 1¼ per cent to 1⅝ per cent.

CALLING OVER. "Calling over" is an essential part of the work of a bank office. The day books should be called over daily with the current account ledgers and other books into which the items have passed, each entry, as it is called out, being ticked in both books. In order that the calling over may be as effective as possible, it is usually carried out, when practicable, by clerks other than those concerned in writing up the day books or posting the ledgers.

CALLS. Shares may be either fully paid or only partly paid. If the latter, the holders are liable, when called upon by the company, to pay up the amounts or "calls" as they are made. Calls should be made in accordance with the company's articles of association or the agreement when the shares were first issued. A limited company may, by special resolution, declare that any portion of its uncalled capital shall not be called up except in the event of the company being wound up. (See RESERVE LIABILITY.)

Some of the clauses of Table A with respect to calls are as follows—

"11. 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 amount 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 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.

"17. The joint holders of a share shall be jointly and severally liable to pay all calls in respect thereof.

"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) five per cent per annum, as may be agreed upon between the member paying the sum in advance and the directors."

There is usually a clause in the articles, providing for the charging of interest on overdue calls, and giving the directors power to forfeit the shares. (See under LIEN.)

A company can sue a member for payment of a call (it being a specialty debt, see Section 20 under ARTICLES OF ASSOCIATION) at any time within twelve years. (See CAPITAL, COMPANIES, SHARE CAPITAL.)

Even after a shareholder has sold his partly paid up shares he continues liable, in some circumstances, in the event of the company being wound up within one year after the shares have been transferred. (See CONTRIBUTORIES.)

The standard call letter, as recommended by the Council of the Institute of Bankers, is shown in the next column.

CAMBIST. A person who deals in foreign moneys, notes and bills of exchange. One who is skilled in the value of foreign moneys and the operations of exchange. The term is now nearly obsolete.

CANADAS. A Stock Exchange name for Canadian Pacific Railroad securities.

Call Letter.—Size 13 in. by 8¼ in. The docket one-quarter of the total length of the form.

CALL LETTER

Space for name and address of Shareholder, to be filled in by the Company.

No.....
IMPERIAL TRUST, LIMITED
983 CORNHILL,
LONDON,
.....19 .

Call of per share on issue of shares,
Making the shares paid.

Sir or Madam,

I have to inform you that the Directors, by a Resolution of the Board dated, have made a Call as set forth above.

The amount due from you in respect of the ..... Shares registered in your name is £.....which must be sent on or before , together with this *entire* Notice, to the Company's Bankers, the *Bank of London Limited*, 83 *Lombard Street, London*, who will return the Notice duly receipted.

[Particulars should be given here if the Certificate requires indorsement.]

By Order of the Board,

Secretary.

Cheques should be made payable to BEARER and crossed *Not Negotiable.*

If altered from "Order" to "Bearer" the alteration *should be signed by the Drawer.*

RECEIVED for account of the IMPERIAL TRUST, LIMITED, the amount of the above-mentioned Call as stated.

For BANK OF LONDON LIMITED,

Impressed Stamp 2d.

.....
Cashier.

Date.....19 .

.....

No.....

IMPERIAL TRUST, LIMITED.

Call of per share on issue of shares.

..... £ - -

Date.....19 .

(See STANDARD FORMS.)

CANCELLATION OF BILL OF EXCHANGE. A bill of exchange is discharged when it is intentionally cancelled. The Bills of Exchange Act, 1882, Section 63, provides:

"(1) Where a bill is intentionally cancelled by the holder or his agent, and the cancellation is apparent thereon, the bill is discharged.

"(2) In like manner any party liable on a bill may be discharged by the intentional cancellation of his signature by the holder or his agent. In such case any indorser who would have had a right of recourse against the party whose signature is cancelled, is also discharged.

"(3) A cancellation made unintentionally, or under a mistake, or without the authority of the holder, is inoperative; but where a bill or any signature thereon appears to have been cancelled the burden of proof lies on the party who alleges that the cancellation was made unintentionally, or under a mistake, or without authority."

Where a bill, or cheque, has been accidentally cancelled by a banker, a note should be made near to the cancellation that it has been "cancelled in error," and the words should be initialed, or signed, by the banker who has made such cancellation. With regard, however, to accidentally cancelled bills which bear foreign indorsements, by a custom of the Clearing House "they are only accepted as 'Returns' under protest, inasmuch as in certain foreign countries the return of cancelled documents is illegal." The holders or their bankers should give notice to the bankers who cancelled the bill that they hold them liable for any consequences that may arise by reason of the cancellation. (*Questions on Banking Practice.*)

Where a cheque is torn in two a banker treats it as cancelled and will not pay it, unless the mutilation is confirmed by a banker as accidental. (See MUTILATED CHEQUE OR BILL.)

When a cheque is paid, it is usually cancelled by the drawer's signature being marked through with ink. Some banks stamp the word "paid" and the date on the face of the cheque. Others perforate the paid cheque with the date.

When a bill is paid, the acceptor's signature is cancelled.

The cancellation of a signature should be decisive, but should not make the signature illegible. (See CANCELLED CHEQUES AND BILLS.)

CANCELLATION OF STAMPS. The Stamp Act, 1891, provides as follows—

"Section 8. (1) An instrument, the duty upon which is required or permitted by law to be denoted by an adhesive stamp, is not to be deemed duly stamped with an adhesive stamp, unless the person required by law to cancel the adhesive stamp cancels the same by writing on or across the stamp his name or initials, or the name or initials of his firm, together with the true date of his so writing, or otherwise effectively cancels the stamp and renders the same incapable of being used for any other instrument, or for any postal purpose, or unless it is otherwise proved that the stamp appearing on the instrument was affixed thereto at the proper time.

"(2) Where two or more adhesive stamps are used to denote the stamp duty upon an instrument, each or every stamp is to be cancelled in the manner aforesaid.

"(3) Every person who, being required by law to cancel an adhesive stamp, neglects or refuses duly and effectually to do so in the manner aforesaid, shall incur a fine of ten pounds."

If any bill of exchange, payable on demand or at sight or on presentation, or not exceeding three days after date or sight, is presented for payment unstamped, the person to whom it is presented may affix thereto an adhesive stamp of two pence, and cancel the same. The two pence may be deducted from the amount of the cheque or bill, or charged in account. (Section 38.) The banker is the only person who can affix and cancel the stamp as permitted in that Section. Where a cheque drawn on unstamped paper had an adhesive stamp affixed and cancelled by an intermediate holder, it was held to be invalid. (*Hobbs* v. *Cathie* (1890), 6 T.L.R. 292.)

CANCELLED CHEQUES AND BILLS. When a cheque is paid, it becomes the property of the drawer, but the banker is entitled to keep it as a voucher till the account is settled, or the customer agrees that the entries in the pass book or statement are correct. A paid cheque is useful evidence for the drawer of the payment of the money. It is also evidence for the banker that he has repaid money belonging to the drawer, to the amount of the cheque.

The cancellation is usually effected by the drawer's signature on a cheque and the acceptor's signature on a bill being marked through with ink, often with the initials of the officer responsible, and an impression is made on each document of the paid date stamp, the date being that of the day of payment. The signatures should not be obliterated, and the date stamp should be distinct.

It is the practice of London bankers to return cancelled cheques to a customer each time he gets his pass book or statement.

In some country banks, however, the paid vouchers are not, as a rule, given up to customers, unless specially asked for. In cases where they are given up, an acknowledgment is obtained from the customer that the entries in the pass book are correct, or a confirmation of the balance is taken.

The cancelled cheques of each customer are usually kept in separate bundles, sorted in order of date of payment, each bundle containing the vouchers for three, six, or twelve months, as may be most convenient. The paying-in slips are retained by the banker and are not given up with paid cheques. They are sorted either along with the cheques or in separate bundles.

If a cancelled cheque is required as evidence in a court of law, the drawer, as being the owner of the paid cheque, although it is in the custody of the banker, must take steps to obtain it from the banker. This, in practice, would never be refused, if a receipt is given to protect the banker. A refusal to hand over a cheque would necessitate the service of a subpoena upon the banker to produce it. (See CANCELLATION OF BILL OF EXCHANGE.)

CANPACS. A Stock Exchange name for Canadian-Pacific Railroad securities.

CAPITAL. In the early stages of civilisation, sheep and cattle acted as a currency. "Being counted *by the head*, the kine was called *capitale*, whence the economical term *capital*, the law term *chattel*, and our common name *cattle*" (Jevons).

In a joint stock company the capital is the sum subscribed by the members of the company—that is, the shareholders—for the purposes of the business. The amount which is authorised by the memorandum of association is the "authorised," "nominal," or "registered" capital. Of the nominal capital there is often only a part of it issued, called the "issued" capital, the remainder being referred to as "unissued." Further portions may be issued from time to time, until the full nominal capital has been issued. Of the capital which has been "issued" (called also the "subscribed" capital), only that part of it is paid up, or subscribed by the shareholders, which the directors have "called up." The part which has been called up and paid is called the "paid up" capital, the remaining part being termed the "uncalled" capital; and it remains unpaid until a "call" is made for it by the directors. If the whole has been called up, the shares are said to be "fully paid." A company may mortgage its uncalled capital. Of the uncalled capital, a certain portion may, if the company has so resolved, form a reserve liability, which is not called up except in the event of the company being wound up. This reserve capital cannot be mortgaged. (Section 60, Companies Act, 1948, see RESERVE LIABILITY.) For example—

Nominal (or Authorised, or Registered) Capital, 20,000 shares, £5 each . .	£100,000
Subscribed (or Issued) Capital, 10,000 shares, £5 each	£50,000
Unissued, 10,000 shares, £5 each . .	£50,000

The subscribed capital may be divided into—

Paid-up Capital, 10,000 shares, £5 each, £2 10s. paid	£25,000
Uncalled Capital, 10,000 shares, £2 10s. each—	
Callable, £1 10s. per share . . .	£15,000
Reserve (callable only in a winding up), £1 per share . . .	£10,000

A shareholder's liability in the company is limited to the nominal value of the shares held by him, and if the shares are fully paid his loss, in the event of the failure of the company, will not exceed the amount he has invested in the company. In the case of a private trader, however, he stands to lose not only the money he has put into the business, but also his private means so far as they may be required to meet the demands of the creditors. A trader's capital is usually treated as being the difference between the assets and the actual liabilities.

H. D. Macleod defines capital as "an economic quality used for the purpose of profit." Under the name of capital are included money, goods, land, personal skill, energies, labour, credit, and anything that is used to produce a profit. But wealth, in whatever form, if unemployed, is not capital. There are two species of capital, circulating or floating capital and fixed capital. Circulating capital, in the words of John Stuart Mill, "does its work not by being kept but by changing hands." "This portion of capital requires to be constantly renewed by the sale of the finished product and when

renewed is perpetually parted with in buying materials and paying wages." Fixed capital produces its effect not by being parted with but by being kept. Wealth expended in land, buildings, docks, roads, machinery, railways, etc., is fixed capital. (See BALANCE SHEET, SHARE CAPITAL.)

CAPITAL ACCOUNT. The account which is concerned solely with the capital or funds subscribed by the shareholders in a bank or other company, for the purpose of carrying on the undertaking, or with the funds or assets put into a private business by its proprietor or the partners in the business.

CAPITAL REDEMPTION RESERVE FUND. (See under REDEEMABLE PREFERENCE SHARES.)

CARAT. A measure by which goldsmiths and assayers denote the fineness of gold. Any portion of gold is supposed to be divided into twenty-four parts, each part being called a carat, and if it is all pure gold, it is said to be "24 carats" fine. English gold coins contain eleven parts pure gold and one part of copper; that is, standard gold is eleven-twelfths fine, and eleven-twelfths of twenty-four carats equal twenty-two carats fine.

The word is, by some, supposed to be derived from the native name of a tree, the seeds of which, owing to their uniformity in size, were used for weighing gold. A carat does not now represent any particular weight, but merely states the proportion of gold there is in any given weight. The carat used for weighing diamonds, however. has a fixed weight equal to 3·17 grains Troy.

CARRIAGE OF GOODS BY SEA ACT, 1924. (See under BILL OF LADING.)

CARRY OVER; CARRYING OVER. On the Stock Exchange to "carry over" means to continue a bargain until next account, instead of paying for stock bought, or delivering stock which has been sold, as the case may be. In the former case the speculator may be required to pay "contango" (*q.v.*) and in the latter, "backwardation" (*q.v.*). (See STOCK EXCHANGE.)

CARRYING OVER DAY. The first day of the settlement on the Stock Exchange. (See CONTANGO DAY.)

CASE OF NEED. (See IN CASE OF NEED.)

CASH ACCOUNT. An account in the general ledger to which the totals (debits and credits) of each day's transactions are passed. The balance of the account represents the amount of cash on hand. Credits to other accounts are debited to cash account, and debits are credited.

In Scotland the term signifies a customer's account on which a cash credit has been granted. It is practically the same as an account in England on which a limit of overdraft is allowed. (See BOND OF CREDIT, CASH CREDIT.)

CASH BALANCE BOOK. This book, which is written up at the close of business each day, contains particulars of all the cash on hand, obtained by combining the details of each cashier's till and the reserve of cash in the strong room. The total should agree with the balance as shown in the day book or cash book, and the cash account in the general ledger.

CASH BONUS. A bonus upon a life policy which is paid in cash, instead of being used to reduce the amount of the premium or to increase the sum ultimately payable under the policy. (See BONUS, LIFE POLICY.)

CASH BOOK. A book which, in some banks, contains a record of all cash transactions. In large offices there may be received cash books and paid cash books. In other banks the cash book is merely for the specification of the cash held in the bank each night.

The day book is in some banks called the cash book. (See DAY BOOK.)

CASH CREDIT. A term commonly used in banks in Scotland to describe an arrangement under which a customer is allowed an advance up to a certain limit, against a "bond of credit" (*q.v.*) by one or more sureties, or cautioners as they are called in Scotland. The customer need not take the whole advance at once, but may draw the amount as required.

The bond of credit is signed by the debtor as well as by the sureties, and the effect of it is, practically, to make all the parties debtors to the bank, although the person in whose name the account stands is the real debtor.

CASH CREDIT BOND. (See this item in Appendix on "Scottish Banking.")

CASH DISCOUNT. An allowance or deduction from the invoice price of goods for payment within a stipulated time. It varies in different trades and seasonal accommodation is often required by traders to enable them to take advantage of cash discount. Cash discount must not be confused with trade discount (*q.v.*).

CASH ORDER. A cash order is a bill of exchange on demand drawn by one person on another. For example, a wholesale dealer John Jones, who has supplied goods to, say, John Brown, a shopkeeper, draws a cash

order upon him, usually in the following form—

English Street,
Carlisle,
July, 19 .

2d.

£10.
On demand pay to the British Bank, Ltd., or order the sum of Ten pounds sterling for value received.

JOHN JONES.

To
Mr. John Brown,
Coney Street,
York.

The order must be indorsed by the banker to whom it is payable, or, if payable to the drawer's order, by the drawer.

The cash order is sent for collection to a banker in the town where John Brown lives, and the banker sends out a messenger to John Brown's address and presents the order for payment. It is expected that the order will be paid in cash, though in some cases payment is received by cheque, when it is known that the drawer is perfectly good and the cheque can be collected the same day. When a cheque is taken the collecting banker frequently attaches the cash order to the cheque; and the banker on whom the cheque is drawn hands over the cash order to the drawer of the cheque when it is paid. In some districts it is customary for the drawee, when the order is presented, to accept it payable at his bankers in the same town. When this is done it should be passed through the local clearing on the same day. The remitter of the order often gives instructions that, if it is not paid on the day of receipt, it may be held over till the following day. In the absence of such instructions the remitter should be advised if a cash order is held over. If the drawer is not at home when the messenger calls a note is left that the order is at the bank and requires his attention.

Cash orders are not, as a rule, accepted by the drawee, and consequently he cannot be sued upon them, but if he gives his cheque in exchange, and it is dishonoured, he can be sued upon the cheque.

Cash orders received for collection should not be credited on the day of receipt to the bank sending them, in cases where the orders are being held over till the next day.

Cash orders are now nearly obsolete.

The stamp duty upon a cash order is twopence.

CASH RATIO. A bank maintains a cash reserve, consisting of bank notes, coin and balances, available on demand with the Bank of England, in order to meet the demands of its customers for ready cash. The ratio between the total of such reserves and the bank's liabilities to the public on current, deposit, and other accounts is known as the Cash Ratio. It shows, therefore, the percentage of the total amount of money lodged with the bank by its customers that is held in the form of cash in the till or as balances at the Bank of England, convertible at will into cash.

Since cash so held is a non-earning asset, banks endeavour to keep its amount to a minimum. This, however, is determined by the banks' experience of their daily cash requirements in the ordinary course of business. A Cash Ratio of approximately 10 per cent was traditionally regarded as desirable, though such a percentage was purely conventional. However, in December, 1946, the London Clearing Banks announced that as from 1st January, 1947: "Taking into account the general disposition of Bank assets now ruling, it has been agreed in consultation with the Bank of England that the *daily* ratio of cash balances to deposit liabilities will be maintained on the basis of 8 per cent." (See WINDOW DRESSING.)

CASHIER'S BOOK. The book in which the cashier enters his daily transactions in the shape of credits received and cash paid, adding at the end of the day a summary showing his opening cash balance and the balance at the close of business. In some mechanised systems the cashier's book is abolished.

CASTING. The act of summing up figures. When a column has been cast-up, the total is often called "the casting."

CAUTION. A method of protecting certain interests in registered land by lodging a notice at the Land Registry. Thus a party to a pending action affecting registered land may lodge a caution at the Land Registry against dealings in the land at issue. (See also MORTGAGE CAUTION.)

CAUTIONARY OBLIGATION. In Scotland, an obligation or undertaking by a cautioner, or surety, that he will be responsible for a certain amount, if the debtor, who is also a party to the bond, fails to repay the debt. (See BOND OF CREDIT; and Appendix on "Scottish Banking" under CAUTIONARY OBLIGATIONS.)

CAUTIONER. (See CAUTIONARY OBLIGATION.)

CAVEAT. (Latin, Let him beware.) A notice of warning given to a public official by

an interested party, as, for example, where a caveat is given to the Yorkshire Deeds Registry by a person claiming to be entitled to an interest in certain lands. The caveat is registered, and remains on the books as a warning to anyone who contemplates dealing with the property. (See YORKSHIRE REGISTRY OF DEEDS.) A caveat is sometimes lodged at the Probate Registry by a party interested in a deceased's estate with the intent to stop the issue of probate. Until the caveat is removed, no grant can be given. The caveat requires renewal after six months.

CENTRAL ASSOCIATION OF BANKERS. This Association was formed in 1895 to unite the committee of the London Clearing Bankers, the West End London Banks, and the Country Banks of the United Kingdom.

The Association was merged in the British Bankers' Association in December, 1919. (See BRITISH BANKERS' ASSOCIATION.)

CENTRAL BANK. The name given to a bank which (*a*) holds its government's liquid funds and the reserves of the commercial banks, (*b*) has a monopoly (or virtual monopoly) of the note issue and the custody and control of the gold reserve of the country, and (*c*) controls and regulates the supply of credit. In some countries the central bank is a privately owned joint stock company, which issues its own notes, subject to certain legal restrictions. In other countries, it is owned by the State. In either case, its function is to control the volume of credit by raising or lowering its rate of discount and by buying or selling securities on the market. Latterly, central banks in certain countries have been charged by their governments with the management of large funds set aside for use in safeguarding the currency against undue short-term fluctuations. (See EXCHANGE EQUALISATION ACCOUNT.)

Central banks are useful bodies to undertake the negotiation of international monetary agreements. The understanding reached between England, France, and the U.S.A. in September, 1936, regarding exchange stabilisation was a good example of this type of co-operation. (See EXCHANGE EQUALISATION ACCOUNT.)

The last twenty-five years have seen a great increase in the number of central banks, partly because of the increase in sovereign states brought about by the break-up of Austria-Hungary and the liberation of Poland and the South Baltic States and partly because governments have realised the power that is given to them by the control of national credit through a central banking system. Thus, the British Dominions have in recent years greatly developed this side of banking, and Canada, India, Australia, New Zealand, and South Africa are now in possession of active central banks. The United States of America in 1913 set up a reserve banking system, rather than a central bank proper, for by the Federal Reserve Act a series of government banks was established and membership of the Reserve System was optional. Members were under an obligation to keep certain specified reserves with their local Reserve Bank, and submit to inspection, receiving certain privileges (such as status) in return. Membership of national banks is now compulsory and the activities of the various reserve banks are co-ordinated and very largely controlled by a Federal Reserve Board, which, though part of the original plan, has in recent years acquired greater powers and has also become less of an organ of the banking profession and much more of a department of government.

CERTIFICATE. The document which is issued by a company, to a member of the company, specifying the shares or stock held by him. It is usually signed by two directors, countersigned by the secretary, and impressed with the company's seal. Certificates are of many different sizes, and usually papers of different colours are used for the various classes or issues of shares and stocks.

The following is a specimen of a certificate—

ORDINARY SHARE CAPITAL

Certificate No.

JOHN JONES & COMPANY, LIMITED, incorporated under the Companies Acts, 1908 to 1917.

CAPITAL

£ in Preference shares of £1 each, Nos. 1 to .

£ in Ordinary shares of £1 each, Nos. 1 to .

Total, £ .

SHARE CERTIFICATE

This is to certify that of is the registered holder of of the above named Ordinary shares of £1 each, numbered to , all inclusive, in John Jones & Company, Limited, subject to the Memorandum of Association and

Regulations of the Company, and that each of the said shares is fully paid up.

Dated this day of , 19 .

} Directors.

, Secretary.

The certificate may have a footnote to the following effect—

"The company will not transfer any shares without the production of the certificate relating to such shares, which certificate must be surrendered before any deed of transfer, whether for the whole or any portion thereof, can be registered, or a new certificate issued in exchange."

In a very few cases, however, there is a footnote to the effect that "This certificate is not required to be delivered up on transfer of the shares, and does not therefore constitute a document of title to the shares or any evidence that they remain in the above name. Shares are only transferable on forms prepared and issued by the company at the request of the transferor."

In a few companies, a separate certificate was originally issued for each share. When any of the shares are transferred, instead of fresh certificates being issued the old ones are simply indorsed with the transfer, and the old certificates given to the transferee, the transfer being registered in the company's books. Occasionally certificates of this description may be found which, though the shares have been transferred from the person named in the body of the certificate, do not give any indication, by indorsement or otherwise, of the transfer. The only way to ascertain who is the registered holder is to write to the company. In other cases where the same certificates pass from one holder to another, the company issues a transfer certificate (to accompany the old certificates) certifying that "a deed of transfer duly executed and attested and stamped as required by law, dated from to conveying shares numbered from to has been deposited in the office of the company and registered in their books on of , 19 ."

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. (Section 81 of the Companies Act, 1948. See SHARE CAPITAL.)

Before an official quotation, on the London Stock Exchange, for stocks and shares can be obtained, the committee require that the certificates must conform to certain conditions. (See QUOTATION ON LONDON STOCK EXCHANGE.)

With regard to the delivery of certificates and debentures by a company, Section 80 of the Companies Act, 1948, provides that—

"(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 share, 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.

"(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."

"Section 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."

A certificate does not always show how much is paid up per share, and this is an important point when the question of security is being considered.

Where certificates are lodged as security, a blank transfer (*q.v.*) and qualifying agreement (*q.v.*), or letter of deposit, are taken by some banks, but the most satisfactory way is to take a completed transfer and letter of deposit and have the shares registered in the names of the nominees of the bank or in the name of a nominee company. If, however, a banker does not wish to register at once, he often takes a fully completed transfer with a letter of deposit and gives notice of his charge to the company. When that is done and he retains possession of the certificate, he has, as a rule, a good security. (See, however, the remarks under TRANSFER OF SHARES with reference to the giving of notice to the Company.) A simple deposit of certificates as security, even without a memorandum of deposit, constitutes an equitable mortgage, and the banker can, when necessary, apply to the Court for power to sell. In nearly all cases, the certificates

must be surrendered before a transfer of the shares can be effected. It may be mentioned that some canal companies used not to issue certificates at all.

It is to be remembered that even a footnote upon a certificate that no transfer of the shares will be registered without production of the certificate is of no value in a case of fraud. In *Rainford* v. *J. Keith and Blackman Co., Ltd.*, [1905] 1 Ch. 296, it was held that the footnote did not constitute a contract and was not binding on the company. This case was followed and its principle approved by Mr. Justice Channell in *Guy* v. *Waterloo Brothers and Layton* (1909), 25 T.L.R. 515.

A certificate does not require a stamp. In cases where a memorandum of deposit under hand of certificates is taken the stamp duty is sixpence; if under seal, the duty is the same as for a mortgage. (See EQUITABLE MORTGAGE.) As to foreign and colonial share certificates, see MARKETABLE SECURITY.

When a certificate has been lost and the owner has obtained a duplicate, he should, in the event of the document being subsequently found, surrender it to the company.

It is also possible for a certificate to be apparently in order and yet, on inquiry, to be found to be of no value, on account of the shares having been sold by the company to satisfy a lien; and in some cases where shares have been converted, the old certificate is sometimes, for one reason or another, not handed over to the company.

Where a certificate has been issued in pursuance of a forged transfer, see FORGED TRANSFER.

Loss of Stock Certificate. The Bank of England, before authorising the issue of a duplicate in the event of the loss or destruction of a stock certificate, may require—

(*a*) Evidence to the satisfaction of the Bank of the loss or destruction and ownership of the certificate; and (*b*) a delay of not more than one year from the date of the loss or destruction; and (*c*) the advertisement of the loss or destruction in two or more London or Dublin daily papers (as the case requires); and (*d*) either the transfer of a sum of stock, of a description approved by the governor or deputy governor of the Bank, equivalent to the market value on the day of transfer of the lost or destroyed certificate, and at least six and a half years' dividends thereon, into the joint names of the governor and deputy governor, by way of security; or the execution of a bond of indemnity in which the owner shall be joined by one or more responsible persons. (The National Debt (Stockholders' Relief) Act, 1892, Section 7 (1).) (See AMERICAN SHARE CERTIFICATES, COMPANIES, SHARE CAPITAL.)

CERTIFICATE OF BONDS. A certificate issued to the holder of registered bonds stating that certain bonds have been registered in his name.

CERTIFICATE OF CHARGE. (See CHARGE CERTIFICATE, LAND REGISTRY.)

CERTIFICATE OF DEDUCTION OF INCOME TAX. (See INCOME TAX.)

CERTIFICATE OF INCORPORATION. On the registration of the memorandum of a company, the registrar of companies shall certify under his hand that the company is incorporated, and in the case of a limited company that the company is limited. From the date of incorporation, mentioned in the certificate of incorporation, the subscribers of the memorandum, and others who may become members, shall be a body corporate, capable of exercising all the functions of an incorporated company, and having perpetual succession and a common seal, with power to hold lands, but with such liability on the part of the members to contribute to the assets of the company, in the event of its being wound up, as is mentioned in the Companies Act, 1948.

Such a certificate is conclusive evidence that all the requirements of the Act, in respect of registration and of matters precedent and incidental thereto, have been complied with, and that the association is a company authorised to be registered and is duly registered under the Act. (See ss. (13)–(15) Companies Act, 1948, and also under ARTICLES OF ASSOCIATION, MEMORANDUM OF ASSOCIATION.)

The regulations regarding the commencement of business by a public company and the exercise of any borrowing powers are contained in Section 109 of the Companies Act, 1948. See that Section under COMPANIES. A private company is entitled to commence business immediately after incorporation. (See CERTIFICATE TO COMMENCE BUSINESS.)

Any person may inspect the documents kept by the registrar, on payment of a fee of one shilling, and any person may require a certificate of the incorporation of any company, or a copy or extract of any document, to be certified by the registrar, on payment of five shillings for a certificate of incorporation and sixpence for each folio of a certified copy or extract. (See REGISTRAR OF COMPANIES.)

The form of the registrar's certificate is as follows—

"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 .

"

"Registrar of Companies."

(See COMPANIES.)

CERTIFICATE OF INSCRIPTION (OR STOCK RECEIPT). A certificate of inscribed stock. It is of value as a memorandum only, the stockholder's title being the entry in the books of the registrar.

CERTIFICATE OF INSPECTION. A shipping document vouching for the condition of perishable goods at the time of dispatch.

CERTIFICATE OF INSURANCE. (See INSURANCE CERTIFICATE.)

CERTIFICATE OF MORTGAGE OF SHIP. A registered owner, if desirous of disposing by way of mortgage or sale of the ship or share in respect of which he is registered, at any place out of the country in which the port of registry of the ship is situate, may apply to the registrar, and the registrar shall thereupon enable him to do so by granting a certificate of mortgage or a certificate of sale. (Section 36, Merchant Shipping Act, 1894.)

The instrument gives particulars of the ship and an account of mortgages or certificates of mortgages granted in respect of the ship. The owner of the shares in the ship appoints an attorney to mortgage the shares, and declares that the money to be raised under the power shall not exceed a specified sum and that the rate of interest shall not exceed a certain rate. He also declares that the power of mortgaging may be exercised at and that the power shall not be exercised after months from the date hereof.

The instrument is signed and sealed by the owner, and then follows the registrar's certificate—

"I registrar of hereby certify that the above written particulars relating to the ship and the title thereto are correct; and I further certify that the said owner has duly subscribed and affixed his signature and seal as appears above.

Registrar."

A person who advances money under a certificate of mortgage, when there is a previous mortgage or certificate of mortgage indorsed on the said certificate, does so at his own risk. His title is liable to be defeated by the person claiming under the incumbrance so indorsed. (See SHIP.)

CERTIFICATE OF ORIGIN OR MANUFACTURE. A document issued at a Custom House as follows—

"I do hereby certify that the undermentioned goods have been entered for shipment per Master for and have been duly verified by the exporter as being of British origin or manufacture.

Given under my hand at the Custom House,

Port of this day of 19

Chief Officer of Customs and Excise, Port of ."

A certificate of origin may also be issued by a Chamber of Commerce.

The object of the certificate is to satisfy an importer in certain foreign countries that the goods he is to receive are of British origin or manufacture. When sending goods to certain countries, exporters must include among the documents a certificate of origin bearing the visa of the consul of the consignee's country.

CERTIFICATE OF PROTEST. (See PROTEST.)

CERTIFICATE OF REGISTRATION. A certificate given by the registrar of companies of any mortgage or charge registered in pursuance of Part III of the Companies Act, 1948 (see REGISTRATION OF CHARGES), and stating the amount thereby secured. The certificate is conclusive evidence that the requirements of the Act as to registration have been complied with. A copy of every certificate of registration is to be indorsed by the company on every debenture or certificate of debenture stock which is issued by the company, and the payment of which is secured by the mortgage or charge so registered. (See COMPANIES.)

CERTIFICATE OF SEARCH. A certificate issued by the Registrar of a Deeds or Charges or Land Register in response to an application for an official search in respect of certain properties or names.

Certificates of search are also issued by local authorities in respect of local land charges. (See also LAND CHARGES, YORKSHIRE REGISTRY OF DEEDS.)

CERTIFICATE OF SUBSCRIPTION. A certificate (in America) issued to a subscriber for shares after payment of the first instalment. Provision is made on the document for receipts for the remaining instalments.

When all the instalments are paid it is exchanged for an ordinary certificate. On the back of a certificate of subscription is printed a form of transfer. (See AMERICAN SHARE CERTIFICATES.)

CERTIFICATE TO COMMENCE BUSINESS. When a public company is entitled to commence business, the registrar of companies issues a certificate that the company is entitled to commence business, and that certificate is conclusive evidence thereof. Any advance made by a banker to a company before the date of that certificate cannot be recovered from the company. A private company, however, is entitled to commence business immediately after incorporation and the above certificate is not required. The regulations regarding the commencement of business and the exercise of any borrowing powers are contained in Section 109 of the Companies Act, 1948. (See that Section under COMPANIES.)

A company limited by guarantee and not having a share capital does not require to obtain a certificate before commencing business or exercising its borrowing powers.

CERTIFICATED BANKRUPT. A bankrupt who holds a release from the Court of Bankruptcy. (See BANKRUPTCY.)

CERTIFICATION OF CHEQUES. In the United States cheques are freely "certified" by bankers, the certification being equal to an acceptance by the banker. When an American banker accepts or certifies a cheque he charges the amount at once to the drawer's account and holds it in a special account against his liability upon the cheque. By the law of that country "where the holder of a cheque procures it to be accepted or certified, the drawer and all indorsers are discharged from liability thereon."

In this country, cheques are often, for the convenience of bankers in connection with the local clearing of cheques, "marked" as good. Instead of "marking" a cheque some bankers pay it, if in order, and give in exchange a clearing voucher to be passed through the next local clearing. (See MARKED CHEQUE.)

CERTIFICATION OF TRANSFERS. (See CERTIFIED TRANSFER.)

CERTIFIED CHEQUE. A cheque which is marked or certified by a banker that it is good for the amount for which it is drawn. The "marking" of a cheque for the drawer or a holder is not a desirable practice. It is better to debit the cheque to the drawer's account and issue a banker's draft. (See CERTIFICATION OF CHEQUES, MARKED CHEQUE.)

CERTIFIED TRANSFER. Transfers are often certified upon the margin by the secretary or registrar of a company, that the certificates for the shares dealt with in the transfer are in the company's office. The words generally used are, "Certificate for shares, paid, has been lodged at the company's office. Date.

"The Company, Limited,
" , Secretary."

Or sometimes the words are "Coupon for £ received at the company's office by ."

The custom of certifying transfers has grown out of the exigencies of Stock Exchange practice when, for example, part only of a holding of shares is sold and the certificate has to be split. The relative transfer is certified by the company that the relative certificate has been lodged with it, thus providing assurance to the buyer that the seller is, in fact, able to deliver the shares in question. Alternatively, the Secretary of the Share and Loan Department of the Stock Exchange will by means of a facsimile signature certify that a specified certificate has been forwarded to the company's office. Many transfer forms have this form of certificate printed on them.

The method of certification varies, and sometimes the secretary or registrar signs or initials the transfer; more often a subordinate official or a clerk signs or initials it. A rubber stamp is used, often with a facsimile signature, which is sometimes initialed.

Cases have arisen where a duly authorised agent has certified transfers in fraud of the company, the relative certificates not having been lodged.

In *Bishop* v. *Balkis Consolidated Co.* (1890), 25 Q.B.D. 512, Lindley, L.J., said: "In my opinion, it is proved that to give 'certifications' is incidental to the transaction, in the ordinary business way, of part of the legitimate business of all companies having capital divided into shares which are transferable by deed or other instrument."

Such a certification, however, does not appear to put much responsibility upon the company. In *Peat* v. *Clayton*, [1906] 1 Ch. 659, Joyce, J., said: "It only amounts to a representation that a document has been lodged with the company, apparently in order, and showing, *prima facie*, that the transferor is entitled to the shares, but it is no warranty of the transferor's title to the shares, or as to the validity of any of the

documents, or that the company has received no notice in lieu of distringas, or any other notice affecting the matter." In *George Whitechurch, Limited* v. *Cavanagh*, [1902] A.C. 117, Lord Macnaghten said: "There is no obligation on a company to certify transfers at all. The certification is not passed by the directors or brought before the board. A certification, in fact, is only required for a temporary purpose, to meet the exigencies of business on the Stock Exchange, which has stated days and fixed periods for the different stages of a business transaction intended to be carried out under its rules." In this case it was held that the authority given by a company to certify transfers only extends to cases where certificates are actually lodged and the company is not bound by any fraudulent act of its secretary in connection with such transfers. Hence certified transfers are not usually acceptable as banking security and if taken should be sent to the registrar without delay.

Section 70 of the Companies Act, 1948, provides that the certification by a company of any transfer will be a representation by the company that there have been produced to the company such documents as show a *prima facie* title to the shares or debentures, but not that the transferor has any title thereto. The section goes on to provide that a transfer will be certificated if it bears the word "certificate lodged" or like words and is signed or initialed by an authorised person. Such signature need not be hand-written.

By the rules of the Stock Exchange, the buyer of securities may refuse to pay for a transfer deed unaccompanied by the certificate, unless it be officially certified that the certificate is at the office of the company. (See BALANCE TICKET, TRANSFER OF SHARES.)

CESSER. After 1925, a mortgage of land is effected by demise or sub-demise for a term of years absolute, subject to cesser on redemption, that is when the mortgage money is repaid the term of years comes to an end or ceases. (See MORTGAGE.)

CESTUI QUE TRUST. A person in whose favour a trust operates, that is, who is beneficially interested in the estate.

If Brown holds land in trust for Jones, Brown is the trustee and Jones is the *cestui que trust*. Plural, *cestuis que trustent*.

CESTUI QUE USE. The person in whose favour a use or trust in real property has been declared.

CESTUI QUE VIE. When property is held by one person during the life of another, the person whose life is the period of the duration of the estate is called the *cestui que vie*. An estate thus held is commonly called an "estate *pur autre vie*."

CHARGE BY WAY OF LEGAL MORTGAGE. A method of effecting a mortgage of freeholds or leaseholds. If the mortgage recites that "A as beneficial owner hereby charges by way of legal mortgage all and singular the property mentioned in the schedule," etc., the mortgagee will be in the same position as if a mortgage had been effected by a demise of freeholds or a sub-demise of leaseholds. See Fifth Schedule to Law of Property Act, 1925. (See also LEGAL MORTGAGE, MORTGAGE.)

CHARGE CERTIFICATE. The certificate issued under seal by the Land Registry when a charge on registered land is registered. It contains the original charge and is the equivalent of a legal mortgage of unregistered land. (See LAND REGISTRATION.)

CHARGES. The amount of commission and debit interest charged to a customer's account half-yearly or quarterly. (See COMMISSION ON CURRENT ACCOUNTS.)

Care should be taken before returning a cheque for lack of funds arising from the debiting of charges.

CHARGES. (See LAND CHARGES, REGISTRATION OF CHARGES.)

CHARGES (CLEARING HOUSE). A parcel of cheques which one member of the Clearing House delivers to another member upon whom they are drawn, and against whom they are charged. (See CLEARING HOUSE.)

CHARGING ORDER. Where a creditor has obtained judgment against a debtor for the payment of a debt, he may obtain from the Court an order charging, with the payment of the judgment debt, any shares or stock standing in the name of the debtor, or in the name of any person in trust for him. The effect of the order is to prevent a company from registering any transfer, or paying any dividend to the shareholder, in respect of the shares or stock so charged. A lender against the shares concerned, if served with notice of the Charging Order, must not lend further sums against the security. At the expiration of six calendar months from the date of the order *nisi*, the judgment creditor may proceed to take the benefit of the charge after obtaining from the court an order for sale.

CHARITABLE COMPANIES. In the case of associations which exist for promoting

certain useful objects, the Companies Act, 1948, Section 14, provides—

"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."

The Board of Trade may by licence direct that such an association be registered as a company with limited liability, without the addition of the word "Limited" to its name. It is exempt from sending lists of members to the registrar of companies. Usually such companies are registered as companies limited by guarantee. Likewise an existing limited liability company, whose objects are restricted as above, may be licensed by the Board of Trade to alter its name by special resolution by the omission of the word "limited." (Section 19, Companies Act, 1948.)

CHARTER. The duty imposed by the Stamp Act, 1891, is—

	£	s.	d.
CHARTER of resignation, or of confirmation, or of novodamus or upon apprising, or upon a decreet of adjudication, or sale of any lands, or other heritable subjects in Scotland . . .	0	5	0

CHARTER-PARTY. An agreement by which the owners of a ship, or their agents, agree to place the vessel at the disposal of a merchant, the charterer, for the conveyance of a full cargo of goods. A charter-party may be for one or more voyages or for a definite period of time, or it may effect a demise of the ship for any length of time that may be agreed upon.

The words "charter party" are said to be derived from the Latin *charta partita* (divided parchment). In former times the document was cut into two parts, one part being kept by the owner of the ship and the other part by the charterer.

The wording of the agreement varies somewhat according to the trade in connection with which it is used. A specimen of a charter-party is shown on page 145.

By the Finance Act, 1949, a charter-party is exempt from all stamp duties.

CHARTERED BANK. A banking company incorporated by special Charter from the Crown. The Charter regulates the working of the company in the same way that the memorandum and articles of association regulate a company incorporated under the Companies Acts, and the liability of the stockholders in a chartered bank is fixed by the Charter.

The Bank of England was incorporated by Charter in 1694, under the authority of an Act of Parliament.

The Bank of Scotland was founded by Scots Act of Parliament, 1695. The Royal Bank of Scotland and the British Linen Bank were incorporated by Royal Charter. These three chartered banks were by their charters "limited" in respect of their note issues and general liabilities, and the word "limited" does not form part of their title. The other banks in Scotland (including two chartered banks, formerly unlimited), are registered under the Companies Acts with limited liability, but the stockholders remain liable with respect to the note issues. (See BANK OF ISSUE.)

In Ireland, the Bank of Ireland is the only bank which has been established by Act of Parliament.

Various Colonial banks, which have their head offices in London, have also been incorporated by Charter from the Crown.

CHARTEREDS. A Stock Exchange name for British South Africa Company's shares.

CHATTELS. Chattel, a modern form of the word cattle. Cattle at one time performed the function of money.

The Bills of Sale Act, 1878, Section 4, defines personal chattels as follows: "The expression 'personal chattels' shall mean goods, furniture, and other articles capable of complete transfer by delivery, and (when separately assigned or charged) fixtures and growing crops, but shall not include chattel interests in real estate nor fixtures (except trade machinery as hereinafter defined), when assigned together with a freehold or leasehold interest in any land or building to which they are affixed, nor growing crops when assigned together with any interest in the land on which they grow, nor shares or interests in the stock, funds, or securities of any government, or in the capital or property of incorporated or joint stock companies, nor choses in action, nor any stock or produce upon any farm or lands which by virtue of any covenant or agreement or of the custom of the country ought not to be removed from any farm where the same are at the time of making or giving of such bill of sale."

CHARTER-PARTY

HULL, 19

It is this day mutually agreed between Owners or Agents, of the good Steam Ship or Vessel called the or substitute (at owners' option) of Tons Nett Register, or thereabouts, and Charterers,

That the said Steamer or Vessel being tight, staunch, strong, and every way fitted for the voyage, shall with all convenient speed proceed to
or so near thereto as she may safely get and there load from the Factors of the said Charterers a full and complete Cargo of

which the said Charterers bind themselves to ship, not exceeding what she can reasonably stow or carry over and above Coal for Bunkers and Ship's use, her tackle and apparel, provisions and furniture. The said Cargo to be brought to and taken from alongside, free of expense and risk to the ship, and being so laden shall proceed with the said vessel, with all convenient speed to

or so near thereunto as she may safely get, and (the Act of God, perils of the sea, fire on board, in hulk, or craft, or on shore, barratry of the Master and Crew, enemies, pirates, and thieves, arrests and restraints of princes, rulers, and people, collisions, stranding, and other accidents of navigation of whatever nature and kind whatsoever, before and during the said voyage always excepted, even when occasioned by negligence, default or error in judgment of the Pilot, Master, Mariners, or other servants of the Shipowners, not answerable for any loss or damage arising from explosion, bursting of boilers, breakage of shafts, or any latent defect in the machinery or hull, not resulting from want of due diligence by the Owners of the Ship or any of them, or by the Ship's Husband or Manager), there deliver the same, on being paid Freight in cash at the rate of
per ton of 20 cwt. delivered, being in full of all Port Charges, Pilotages, and Harbour Dues on the Steamer, Charterers paying all dues and duties on the cargo
Cargo to be loaded
and discharged
(Sundays and holidays excepted). Lay hours to commence from the time Steamer or Vessel is ready to receive and deliver, and if longer detained Demurrage to be paid at the rate of per hour.

It is also agreed that the Owners of the said Steamer or Vessel shall reserve to themselves the right of lien upon the Cargo laden on Board, for the recovery and payment of all Freight, Dead Freight, Demurrage, and all other charges whatsoever. The Master is to sign bills of Lading at such rates of Freight as may be required by the Charterers or their Agents, without prejudice to this Charter-party, but at not less than chartered rate.

General Average (if any) as per York/Antwerp rules, 1924.

Cash for the disbursements of the Steamer or Vessel to be advanced to the extent of £ (if required), subject to insurance.

The Ship has liberty to call at any ports in any order, to sail without Pilots, to tow and assist Vessels in distress, and to deviate for the purpose of saving life or property. All salvage and/or towage for owners' sole benefit.

Penalty for non-performance of this Charter, estimated amount of Freight.

The Brokerage is payable by the Ship to , at per cent on gross amount of Freight, and is due on signment of this Charter-party, Ship lost or not lost, by whom also she is to be reported and/or cleared at Customs, Hull, or by their Agents at any other Port.

Witness

Witness

"Lay hours" in the above document refer to the time for loading, or unloading. "Demurrage" is the charge made for delay. As to "General Average as per York/Antwerp Rules," see GENERAL AVERAGE.

By Section 5: "Trade machinery shall, for the purposes of this Act, be deemed to be personal chattels, and any mode of disposition of trade machinery by the owner thereof which should be a bill of sale as to any other personal chattels shall be deemed to be a bill of sale within the meaning of this Act."

Under the Administration of Estates Act, 1925, "personal chattels" mean carriages, horses, motor cars (not used for business purposes), china, books, furniture, jewellery, wines, etc., but do not include any chattels used at the death of the intestate for business purposes nor money or securities for money. (Section 55 (1) (x).)

CHEAP MONEY. Money is said to be "cheap" when it can be borrowed at a low rate of interest. Money is called "dear" when, owing to its scarcity, it can be borrowed only at a high rate.

CHECK BOOK. The name sometimes given to the deposit book or pass book which is supplied to depositors in savings banks.

Check book is also the American method of spelling cheque book.

CHECK LEDGER. A book of the nature of a day book, and which is used in some banks instead of a day book. In a large office there may be a separate check ledger for each current account ledger.

It contains details of all the items which are posted into the corresponding ledger, the debits in one column and the credits in another, and the entries in the check ledger are called off daily with the entries in the current account ledger. There may also be a check ledger for the deposit ledger, impersonal ledger, etc., the final totals of each check ledger being carried into the summary book at the end of the day.

CHEQUE. (Formerly written "check.") Gilbart says: "The word is derived from the French *echecs*, chess. The chequers placed at the doors of public-houses are intended to represent chess-boards, and originally denoted that the game of chess was played in those houses. Similar tables were employed in reckoning money, and hence came the expression 'to check an account'; and the Government office where the public accounts were kept was called the Exchequer." Another explanation is that the word "check" arose from the consecutive numbers which were placed upon the forms to act as a check or means of verification. In the United States the word "check" is used at the present day. Cheques first came into use about 1780.

The use of cheques, except for the purchase of property, payment of wages, household and pocket expenses, has almost supplanted the legal currency of the country. From statistics taken at banks in London in 1922, the Clearing House report states that out of a million pounds paid into a bank only £4,260 consisted of bank notes and £2,640 of Treasury notes and coin.

Sir John Paget, in the Gilbart Lectures, 1916 (No. 1), said that "money on current account is just like any other debt, it is repayable on demand; if a customer comes and asks for his money, he is entitled to have it without the formality of drawing a cheque." In such a case, however, the customer would have to give a receipt, stamped twopence, if for £2 or over. But the regular and ordinary method of withdrawing money from a current account is by means of a cheque. A depositor may withdraw money from his deposit account by signing a form of receipt. (See DEPOSIT ACCOUNT.)

Part III of the Bills of Exchange Act, 1882, is devoted to provisions regarding such features of cheques as are not found in connection with a bill.

Section 73 defines a cheque—

"A cheque is a bill of exchange drawn on a banker, payable on demand.

"Except as otherwise provided in this Part, the provisions of this Act applicable to a bill of exchange payable on demand apply to a cheque."

Section 3 defines a bill of exchange (see under BILL OF EXCHANGE). These two Sections, taken together, show that a cheque is an unconditional order in writing, drawn on a banker, signed by the drawer requiring the banker to pay on demand a sum certain in money to or to the order of a specified person or to bearer.

A cheque differs from a bill in several points: it does not require acceptance and is not entitled to days of grace; it is drawn upon a banker; the banker may be protected if he pays it bearing a forged indorsement; the drawer is the person liable to pay it, and the drawer, as a rule, is not discharged by delay in presenting it for payment. The intention of a cheque is that it be paid at an early date. The drawee's authority to pay is determined by the drawer's death, and the drawer may stop payment of the cheque.

Indelible pencils are not desirable articles with which to draw cheques. A cheque written in ordinary pencil should not be

paid without personal reference to the drawer, as the banker cannot possibly tell whether or not it has been altered. It is much to be desired that all cheques should be written in ink. Typewritten cheques are too easily altered, and their use should be discouraged as far as possible.

A cheque written upon a sheet of paper, provided it is in proper form, is sufficient. It must be stamped with a twopenny adhesive stamp (or equivalent), and the stamp must be cancelled by the person drawing the cheque before he delivers it. Cheques of this description should, however, never be drawn except in cases of extreme necessity.

"A customer's cheque must be unambiguous and must be *ex facie* in such a condition as not to arouse any reasonable suspicion. But it follows from that that it is the duty of the customer, should his own business or other requirements prevent him from personally presenting it, to take care to frame and fill up his cheque in such a manner that when it passes out of his (the customer's) hands it will not be so left that before presentation, alterations, interpolations, etc., can be readily made upon it without giving reasonable ground for suspicion to the banker that they did not form part of the original body of the cheque when signed. To neglect this duty of carefulness is a negligence cognisable by law. The consequences of such negligence fall alone upon the party guilty of it—namely, the customer." (Lord Shaw in *London Joint Stock Bank, Ltd.* v. *Macmillan and Arthur*, [1918] A.C. 777.) (See also under ALTERATIONS.)

As to the points to be observed when drawing a cheque, see DRAWING A CHEQUE.

At one time a cheque could not be issued for less than twenty shillings, but now a cheque may be for any amount, from one penny upwards. If the amount of a cheque includes a half-penny, the half-penny is ignored by bankers.

When a cheque is drawn in England on an English bank in foreign currency, the method usually adopted between the collecting and paying bankers is for the cheque to be presented for payment converted into sterling at the current rate of exchange. If the paying banker is in agreement with the rate the cheque is paid in sterling. If the customer instructs his banker to debit the amount for which the cheque has been drawn to a currency account, the paying banker, having paid sterling, sells the currency at the current rate, thereby reimbursing himself for the amount paid to the collecting banker. If the paying banker is not in agreement with the rate of exchange claimed by the collecting banker, he offers a draft in currency on his foreign correspondent, and this draft is usually taken by the collecting banker in place of the sterling originally claimed, and the currency account of the customer is debited with the amount. If the customer wishes to pay in sterling, the equivalent at the rate agreed upon between the collecting and paying banker is debited to his sterling account, but should the paying banker refuse to pay at the rate demanded, he will issue a cheque in currency on his foreign correspondent, debiting the sterling account of his customer at the selling rate for drafts on his foreign correspondent. (See the case of *Cohn* v. *Boulken* under BILL OF EXCHANGE.)

See Section 72 (4) of Bills of Exchange Act, 1882, under FOREIGN BILL with regard to a bill in foreign currency drawn out of but payable in the United Kingdom.

The members of the British Bankers' Association agreed in June, 1946, to standardise cheque forms. As regards size, they must not exceed 8 inches by 4 inches and must not be less than 6 inches by 3 inches.

Prior to this time, the amount was usually inserted in figures on the left-hand side; as from June, 1946, the space for the amount in figures will be on the right-hand side, immediately above the drawer's signature.

These innovations will go far to expedite the work of those concerned with the clearing of cheques.

The customary form of cheque should be adhered to as much as possible, though legally any form which fulfils the requirements of the Bills of Exchange Act would be sufficient, as, for example, where the drawer instead of signing his name at the bottom signs it at the top, "I, John Brown, direct you to pay to John Jones the sum," etc.

The Bank of England declines to pay cheques unless drawn upon the forms it supplies.

Some cheques have a notice upon them that they are payable only if presented within a certain period. Such a condition may possibly exclude the document from being considered a cheque under the Bills of Exchange Act. In *Thairlwall* v. *Great Northern Railway Company*, [1910] 2 K.B. 509, where a dividend warrant had a condition at the bottom of it that "it will not be honoured after three months from date

of issue unless specially indorsed for payment by the secretary," it was argued that the document was not a cheque because of this condition. Mr. Justice Bray said: "I have felt a great deal of doubt on this point because of this statement. But, on the whole, I am inclined to think that this document is a cheque, and is within the meaning of Sections 73 and 3 of the Bills of Exchange Act, 1882, a cheque and an unconditional order in writing. . . . And I think it is none the less a cheque because of that statement at the bottom of the document. I do not consider that statement makes the order conditional."

There are also forms of cheques, or rather documents, which make the payment dependent upon a certain receipt being signed. Conditional documents of this kind are not cheques as defined by the Bills of Exchange Act. They may, however, be crossed like a cheque under Section 17, Revenue Act, 1883. See that Section under CROSSED CHEQUE. (See RECEIPT ON CHEQUE.)

The form of cheque (or, more correctly, order for payment) in use by some Local Authorities is a peculiar one as, being drawn upon the Treasurer, it does not conform with the requirement of the Bills of Exchange Act that it be drawn upon a banker. It is considered, however, that, although drawn upon an individual, the order is practically drawn upon the bank where the Treasurer's account is kept, and the banker paying such order is entitled to the protection which is afforded by Section 60 of the Bills of Exchange Act, 1882, against forged indorsements. If such orders should be held not to come within the Bills of Exchange Act, then the benefit of Section 60 would not apply, and they would also be incapable of being validly crossed.

Cheques paid to credit of a customer's account should be carefully examined before being remitted for collection, and if not in order should be returned to the customer, or, if possible, sent out to him to be remedied, as, for instance, where he has omitted to indorse or has indorsed them wrongly.

With regard to alterations in cheques and fraudulent alterations, see ALTERATIONS.

If there is a difference between the amount in writing and the figures on a cheque, the cheque may be paid according to the amount in writing, but it is the usual custom, and a prudent course, to return the cheque unpaid marked "amounts differ." If the figures have been omitted and the amount only appears in writing, a banker is justified in paying the cheque according to the words though if the words have been omitted and the amount is given only in figures, the cheque should not be paid.

A cheque payable to "John Brown only" or to "John Brown, not transferable," must be paid to none other than John Brown.

If the payee himself presents a cheque for payment and declines to indorse it, he has probably a legal right to do so, but see PAYEE.

If the balance of a customer's account will not allow of the full payment of a cheque which is presented, the cheque should be dishonoured. A cheque cannot be paid in part. In England, a cheque presented subsequently for a smaller amount, which the account will stand, may be paid. In Scotland, however, when a cheque is presented for payment and there is not a sufficient balance to meet it, the cheque attaches such funds as there may be in the banker's hands belonging to the drawer, and subsequent cheques, though for a less amount than the balance of the account, will be returned unpaid. The amount attached is transferred by the banker to a separate account. (See Section 53 under DRAWEE.)

A cheque which has been cut, or torn, into two or more portions, or torn sufficiently to suggest cancellation, is not, as a rule, paid by a banker. But if a mutilated cheque bears a note upon it signed by a collecting banker, such as "accidentally torn," it is customary to pay it.

A cheque is sometimes marked or certified by a banker as being good for the amount for which it is drawn. It may be marked by the banker on whom it is drawn for another banker, as a matter of convenience for the purposes of clearing arrangements. Or, occasionally, it may be marked at the request of the drawer, or even at the request of the payee or holder.

English bankers do not encourage the marking of cheques as between themselves and the public, it being much the preferable way to pay the cheque and, if necessary, give a draft in exchange. In America, the certification or acceptance of cheques is very common. (See CERTIFICATION OF CHEQUES.)

Marking a cheque by a banker is not equivalent to acceptance. If it was marked at the request of a payee or holder it could not be debited to the drawer's account if, in the meantime, the drawer has died or has stopped payment of the cheque, or if a receiving order has been made or notice of the presentation of a bankruptcy

petition has been received. (See ACTS OF BANKRUPTCY.) (See further information under CERTIFICATION OF CHEQUES, MARKED CHEQUE.)

A person is liable to be charged with false pretence if he gives a cheque in payment of a purchase when he has no account with the banker on whom the cheque is drawn.

As to an overdue cheque, see Section 36, Bills of Exchange Act (under NEGOTIATION OF BILL OF EXCHANGE), and Sections 45 and 74 (under PRESENTMENT FOR PAYMENT).

STAMP DUTY.—The duty is (since Sept. 1, 1918) twopence, for any amount, and the stamp may be either adhesive or impressed. A cheque must be stamped even if the amount is less than £2. Stamps to the value of twopence may be used. The stamp duty on cheques was increased from one penny to twopence by the Finance Act, 1918, Section 36. (See under BILL OF EXCHANGE.)

If an adhesive stamp is used, it must, if the cheque is drawn within the United Kingdom, be cancelled by the drawer before he delivers the cheque out of his hands, custody or power (Section 34 (1), Stamp Act, 1891). If it is drawn out of the United Kingdom and is unstamped, every person into whose hands it comes in the United Kingdom before it is stamped shall, before he presents for payment, or indorses, transfers, or in any manner negotiates or pays the cheque, affix thereto a proper adhesive stamp and cancel the stamp so affixed. If at the time any cheque comes into the hands of any *bona fide* holder, there is affixed an uncancelled adhesive stamp, it shall be competent for the holder to cancel the stamp. (Section 35, Stamp Act, 1891, see under BILL OF EXCHANGE.) ("United Kingdom" does not include Eire. See under IRELAND.)

By Section 8 (1), of the same Act, every person who is required by law to cancel an adhesive stamp, and who neglects to do so, is liable to a penalty of £10. (See CANCELLATION OF STAMPS.)

By Section 38 (1), every person who issues, negotiates or presents for payment or pays any cheque not being stamped, incurs a penalty of £10, and the person who takes such an unstamped cheque shall not be entitled to recover thereon.

By Section 38 (2), if a cheque is presented for payment unstamped, the banker may affix the adhesive stamp of twopence [since Sept. 1, 1918] and cancel it, and charge the duty in account against the person by whom the cheque was drawn, or deduct the duty from the amount of the cheque. Besides the drawer, no other person than the banker to whom an unstamped inland cheque is presented for payment, has power to stamp it, and it has been held (*Hobbs* v. *Cathi*, (1890), 6 T.L.R. 292) that when stamped by an intermediate holder it could not be recovered on, even by an innocent person who subsequently took it for value without notice that it had been improperly stamped. The provisions of this subsection are, by the Finance Act, 1918, Section 36 (2) (see under BILL OF EXCHANGE), extended so that a banker may affix an adhesive penny stamp on a cheque which is stamped only with a penny stamp.

Where a formal receipt is given upon a cheque, the receipt requires (under Section 9 of Finance Act, 1895) an adhesive stamp of twopence (or two penny stamps), increased from 1d., as from 1st Sept., 1920, if for an amount of £2 or upwards. This receipt stamp is in addition to the stamp of twopence upon the cheque. A receipt on a cheque for salary, wages, or similar payments is exempt from stamp duty. (Finance Act, 1924, see under RECEIPT ON CHEQUE.)

If a cheque is drawn in such a form as "Pay John Brown on July 5" it must be treated as a bill and stamped with *ad valorem* duty. A post-dated cheque requires only the usual twopenny stamp.

A cheque is not invalid solely by reason that it is post-dated or ante-dated.

An order to pay subscriptions or to make other periodical payments must be stamped, but the office debits arising out of such order do not require to be stamped, unless they are signed or initialed by the customer or recipient, but an order to a banker to pay subscriptions to different payees at stated periods is liable to a duty of twopence in respect of each such subscription, whether the payments fall to be made at the same date or not.

An office debit arising out of an order from a customer to the banker to purchase shares, etc., and charge the cost to his account, does not require to be stamped.

A cheque drawn by a customer in payment of Government taxes or duties is not exempt from duty. (Exemption No. 10 under BILL OF EXCHANGE applies only to the remittance of money which is already Government money.)

As to cheques drawn by a building society see under BUILDING SOCIETY.

Cheques are exempt from stamp duty in the following cases.

Cheque drawn by or on behalf of a registered Friendly Society. Section 33 of the Friendly Societies Act, 1896 (59 & 60 Vict. c. 25), enacts that stamp duty shall not be chargeable upon a "draft or order or receipt given by or to a registered society or branch in respect of money payable by virtue of its rules or of this Act."

Cheque drawn by the Registrar of a County Court upon his public account (45 & 46 Vict. c. 72, Section 9).

Cheque drawn by a Trustee in Bankruptcy (4 & 5 Geo. V. c. 59, Section 148).

Cheque drawn by a liquidator on the liquidation account, in a winding up by the court of a company registered in England, or in a creditors' voluntary winding up. (Companies Act, 1948, Section 339.)

Cheque drawn by any officer of the post office for the purpose of remittance to the Postmaster-General (44 & 45 Vict. c. 20, Section 5).

Cheque drawn by Government Departments.

Cheque required to be made in pursuance of the Loan Societies Act (3 & 4 Vict. c. 110, Section 14) or of the rules of the society.

Cheque required to be made in pursuance of the Trustee Savings Bank Act (26 & 27 Vict. c. 87, Section 50).

Cheque drawn by a banker upon another banker in settlement of an account between such bankers (see BILL OF EXCHANGE—EXEMPTION 2).

Letter written by a banker to another banker (both in United Kingdom) directing the payment of any sum of money, the same not being payable to bearer or to order, and such letter not being sent or delivered to the persons to whom payment is to be made, or to any person on his behalf. (See BILL OF EXCHANGE—EXEMPTION 3.)

See also the list of exemptions in the Stamp Act, 1891, given in the article BILL OF EXCHANGE. (See BANKER'S ORDER.)

As to cheques drawn out of the United Kingdom and negotiated in the United Kingdom, see under BILL OF EXCHANGE.

Cheques duly stamped in Eire do not require to be stamped a second time in Great Britain, nor do cheques duly stamped in Great Britain require to be stamped a second time in Eire.

The Eire impressed stamp on cheques bears the letters S.E. (Saorstat Eireann) in monogram.

The following minute of the Board of Inland Revenue was passed May, 1904—

"The attention of the Board of Inland Revenue has been drawn to the fact that certain instruments chargeable, as they are advised, under the Stamp Act, 1891, with a penny [since Sept. 1, 1918, twopence] duty as 'Bills of Exchange payable on demand, or at sight, or on presentation,' are suffered to pass without such stamp. The Board have reason to believe that this practice is now very prevalent.

"Section 32 of the Act is as follows—

'For the purposes of this Act the expression "Bill of Exchange" includes draft, order cheque, and letter of credit, and any document or writing (except a bank note) entitling or purporting to entitle any person, whether named therein or not, to payment by any other person of, or to draw upon any other person for any sum of money; and the expression "Bill of Exchange payable on demand" includes—

'(*a*) An order for the payment of any sum of money by a Bill of Exchange or promissory note, or for the delivery of any Bill of Exchange or promissory note in satisfaction of any sum of money, or for the payment of any sum of money out of any particular fund which may or may not be available, or upon any condition or contingency which may or may not be performed, or happen; and

'(*b*) An order for the payment of any sum of money weekly, monthly, or at any other stated periods, and also an order for the payment by any person at any time after the date thereof of any sum of money, and sent or delivered by the person making the same to the person by whom the payment is to be made, and not to the person to whom the payment is to be made, or to any person on his behalf.'

"Section 38, subsection (1), imposes a fine of ten pounds upon every person who issues, indorses, transfers, negotiates, presents for payment, or pays any Bill of Exchange not being duly stamped, and it is provided that the person who takes or receives any such bill shall not be entitled to recover thereon.

"The instruments to which the Board refer appear to be especially made use of by Education Authorities and other Municipal bodies in connection with payments which they desire to be made on their behalf by their Bankers or Treasurers. These instruments vary, to some extent, in form, but their general nature is as follows: (1) A

document is handed by the Authority to the creditor or other person who is to receive the money, which document informs him that the Treasurer of the Authority, or a certain named Banker, has been authorised to pay him a sum of money, specified on the document, and that payment will be made accordingly, by the Treasurer, or by such Banker, as the case may be, on presentation of the document. (2) Concurrently with or antecedently to the issue of this document a letter is written by the Authority or their Officer to the Banker or Treasurer giving a list of the various persons to whom payments are to be made upon presentation of a document in the above form, and requesting the Banker or Treasurer to make such payment accordingly.

"The Board are advised that the last mentioned document, namely, the letter of request to the Banker or Treasurer, comes within the paragraph marked (*b*) of Section 32 above set forth, as being an order for the payment by a person (in this case the Treasurer or Banker) of a sum of money, and sent or delivered by the person making the same (in this case the sender of the letter) to the person by whom the payment is to be made (namely, the Banker or Treasurer); and the Board, moreover, are advised that a penny [since Sept. 1, 1918, twopenny] stamp is necessary in respect of each payee's name appearing upon the letter of request, because the payment to be made to each of such persons is in respect of a separate and distinct transaction.

"The Board are also advised that each letter handed to the payee as above mentioned, whether supplemented by a letter of request or not, comes within the words of the first paragraph of Section 32, as being a document purporting to entitle a person to payment by any other person of a sum of money.

"As the question of the liability of either of these two classes of documents has not, so far as the Board know, been directly the subject of any legal decision, it is of course open to Bankers and others interested to test the question whether the Board's view is right, by obtaining a legal decision in the manner pointed out by the Stamp Act. Until, however, the parties see fit to take steps to do this the Board will act upon the view expressed above.

"The Board are confident that they can rely upon the ready assistance of Bankers, Local Authorities and their Officers in seeing that documents of this character are stamped in accordance with the provisions of the law. They feel it to be their duty, however, to point out that should occasion arise after this notice they will have no alternative but to institute proceedings for recovery of the penalties provided by Section 38 of the Act.

"While dealing with the question of stamp duty on Bills of Exchange, the Board desire to mention that they have some reason to think that orders to Bankers for the payment of sums of money at stated periods (e.g. Club subscriptions, and instalments of the price of articles purchased on the hire system) are frequently not stamped. The omission of the stamp is doubtless due to a misapprehension as to the provisions of the law; but it is clear that such orders fall within the definition in Section 32 (*b*) of the Stamp Act, and should in all cases bear stamps."

Where a customer draws a single cheque for the total of his creditors' accounts and hands the cheque to the bank with a list of the creditors, the names of their bankers and the amounts of their debts, and requests the bank to pay over the amounts, it is considered by the Board of Inland Revenue that neither the list of payments to be made nor the individual credit or advice slips attract stamp duty. (See TRADERS' CREDITS.)

(See AGENT, ALTERATIONS, AMOUNT OF BILL OR CHEQUE, ANSWERS, ANTE-DATED, BEARER, BILL OF EXCHANGE, BILLS OF EXCHANGE ACT 1882, CANCELLATION OF BILL OF EXCHANGE, CANCELLED CHEQUES AND BILLS, COLLECTING BANKER, CONSIDERATION FOR BILL OF EXCHANGE, COUNTERMAND OF PAYMENT, CROSSED CHEQUE, DATE, DELIVERY OF BILL, DISHONOUR OF BILL OF EXCHANGE, DRAWEE, DRAWER, FOREIGN BILL, FORGERY, HOLDER FOR VALUE, HOLDER IN DUE COURSE, HOLDER OF BILL OF EXCHANGE, INCHOATE INSTRUMENT, INDORSEMENT, INDORSER, INLAND BILL, LOST BILL OF EXCHANGE, MARKED CHEQUE, NEGOTIATION OF BILL OF EXCHANGE, NOT NEGOTIABLE CROSSING, ORDER, OVERDUE BILL, PART PAYMENT, PARTIES TO BILL OF EXCHANGE, PAYEE, PAYING BANKER, PAYMENT BY, PAYMENT OF CHEQUE, POST-DATED, PRESENTMENT FOR PAYMENT, RECEIPT ON CHEQUE, RETURNED CHEQUE, STALE CHEQUE, TIME OF PAYMENT OF BILL, TRANSFEROR BY DELIVERY, TRAVELLERS' CHEQUES, UNIFORM LAW.)

CHEQUE BOOK. A book of cheque forms, with counterfoils attached.

The cheques are numbered consecutively

and the numbers continue from book to book. Each book is entered in the cheque book register, with a record of the name of the customer to whom it has been given.

When a cheque is used, the counterfoil should be filled up.

When a new book is required, the customer should either obtain it personally or fill up and sign an application form for a new book. An application form is usually inserted in each cheque book, a few forms from the end of the book.

It is an advantage if a customer's written acknowledgment can be obtained when a cheque book is issued to him.

When not in use, it is prudent to keep a cheque book locked up.

The various points which should be observed when drawing a cheque are given under DRAWING A CHEQUE.

In America it is called "check-book." (See CHEQUE BOOK REGISTER.)

CHEQUE BOOK, APPLICATION FOR. In order to prevent a cheque book being obtained by anyone who is not entitled to it, a new book should be delivered only when the bank's application form is signed by the customer. The following is a specimen form—

"No. 19

X AND Y BANK, LIMITED.

Please supply a book containing

Stamped $\frac{\text{uncrossed}}{\text{crossed}}$ cheques, payable to $\frac{\text{bearer}}{\text{order}}$

and debit $\frac{\text{our}}{\text{my}}$ account.

Signature

Address

Strike out the words not required."

CHEQUE BOOK REGISTER. Each denomination of cheque book is entered in a separate book, or in separate parts of the same register. When a fresh supply of cheque books is received by a branch, each book is entered in the register by its number, and when a book is sold the name of the customer and the date are written opposite the entry of that cheque book in the register. In some banks, the person who obtains a new cheque book is required to sign the register opposite the number of the book he receives.

As each cheque book is sold and marked off in the register, the price of it is credited to cheque book account, and if, on a trial, the cheque books on hand do not agree with the balance of the cheque book account, it will be necessary to tick off the books shown as sold in the register with the credits to cheque book account.

Of course the balance of cheque book account represents merely the amount of the stamps and does not include the cost of printing the books.

CHEQUE PAYABLE TO BANK. (See case under DRAFT.)

CHEQUE RATE. A term used in connection with the Foreign Exchanges, signifying the price in one country at which a cheque, or sight draft, upon another country can be bought.

An alternative name for Cheque Rate is Sight Rate. (See COURSE OF EXCHANGE, LONG RATE, SHORT RATE.)

CHEQUELET. The name given, popularly, to a form of receipt which was introduced by a bank in 1927. The intention was that customers could obtain from the bank a "book of receipts" containing a number of forms which, being available only for the payment of sums under £2, would not require to be stamped.

A customer requiring these forms signed the following request—

.....Bank, Limited.

.....Branch

I/We request you to allow me/us to withdraw from time to time from my/our account with you sums under £2 each against delivery to you of receipts addressed to you and duly signed by me/us and I/we authorise you to pay the amount of such receipts to the bearers thereof and to debit the same to my/our account.

Dated this.....day of.....19.....

Signature.....

Address.....

The following is a copy of a receipt form—

THIS RECEIPT MUST ONLY BE USED FOR AMOUNTS UNDER £2.

0048 .....19.....

Received of

.....BANK, LIMITED

.....*Branch.*

the sum of.....

at the debit of my/our account.

£.....

When the receipt was filled in for any sum under £2 it might be handed to a tradesman or other creditor in settlement of a debt.

The Commissioners of Inland Revenue expressed the opinion that the "receipt" was a bill of exchange within the true intent and meaning of the Stamp Act, 1891, and, being payable on demand, or at sight, or on presentation, was chargeable with the duty

of twopence under that Act and Section 36 of the Finance Act, 1918.

In a special case stated by the Commissioners, which raised the question whether these receipt forms for sums under £2 were subject to stamp duty, Rowlatt, J., held that they were. (*Midland Bank, Ltd.* v. *Commissioners of Inland Revenue*, (1927), 43 T.L.R. 754.) In the course of his considered judgment, Rowlatt, J., said: "The tax is claimed not as if the documents had been cheques, or anything else which they are not, but because (so it is said) they are in themselves 'documents entitling' a person to a payment by another person—which is a substantive subject of tax. This document is referred to as a receipt. But it is not a receipt unless and until it is used as such by being given as an acknowledgment of payment. When the person signing it gives it to his creditor he is not giving a receipt. The words of it describe nothing occurring between the signatory and the recipient, and unless we are permitted to inquire what is the meaning of its existence in the hands of the bearer we must say that, as a document, it has at this stage effected nothing at all; it has not indeed come into operation. If, as I think, this inquiry cannot be excluded, we find that it has effected something; that it has come into operation as a delivered document and that (subject to one question as to the meaning of the word 'entitled') its function has been to entitle the recipient to payment of the sum mentioned in it. Mr. Goddard correctly pointed out that the holder of this document cannot sue the bank, nor, upon the document itself, the signatory. I think, however, that the case of *The Committee of London Clearing Bankers* v. *Commissioners of Inland Revenue*, [1896] 1 Q.B. 542, shows clearly that no such right of action is necessary to bring a document within the phrase under discussion. For these reasons I think that my decision must be in favour of the Commissioners."

CHEQUES CONTRIBUTIONS. (See TAX-CHEQUES.)

CHIEF RENT. Freehold land in Lancashire and around Bristol is sometimes subject to a perpetual rent charge called a "chief rent." The payment of the rent is secured to the owner of the rent charge by a right of re-entry. A chief rent must not be confused with a ground rent, where the fee simple rests in the party receiving the rent, the party paying it having merely a leasehold interest. With a chief rent the party paying it is the owner of the fee simple but is under a liability to pay an annual charge thereon. (See also FEE FARM RENT.)

CHIROGRAPH. Literally a handwriting. A chirograph was an old form of deed which was written in two parts on the same sheet of parchment. Between each part was a blank space, and right along that blank space the word "chirographum" was sometimes written. The two parts were then separated, by the parchment being cut with an irregular line through that word, and each party received one of the parts. Each part would, of course, contain only portions of the letters of the word, and when the two parts were brought together again, the fitting in of the wavy line and completion of the word "chirographum" proved that the one deed was the counterpart of the other. (See INDENTURE.)

CHOSE IN ACTION. Property which a person has not got in his actual possession, but which he has a right to demand by an action at law. Money due upon a bill of exchange, book debts, insurance policies, legacies, and stocks and shares in a company are examples of a chose in action. Where the money or goods are in actual possession, they are called choses in possession. (See DEBTS—ASSIGNMENT OF.)

CHOSE IN POSSESSION. (See CHOSE IN ACTION.)

CHURCHWARDENS. From the commencement of the Parochial Church Councils (Powers) Measure, 1921, there shall be transferred to the Parochial Church Council of every parish "all powers, duties and liabilities of the churchwardens of such parish relating to the financial affairs of the Church, including the collection and administration of all moneys which may be raised for Church purposes and the keeping of accounts in relation to such affairs and moneys." The Rules of Procedure provide that the Council may appoint one or more of their number to act as treasurer, and failing such appointment the churchwardens, if members of the Council, shall act jointly as treasurers. (See PAROCHIAL CHURCH COUNCIL.)

C.I.F. The letters stand for cost, insurance, freight. When a producer abroad offers to supply goods to an importer in this country at "£— per ton c.i.f., London," it means that the price quoted is to include the cost of bringing the goods to London and of insuring them in transit.

CIRCULAR CHEQUES. See TRAVELLERS' CHEQUES.

CIRCULAR LETTER OF CREDIT. The following is a specimen Circular Letter of Credit—

Circular Letter of Credit—

Not available after 19 .

No. .

£ .

Date 19 .

GENTLEMEN—

We beg to introduce to you to whom you will please furnish such funds as may require up to the aggregate amount of Pounds sterling against sight drafts on our Head Office, London, each draft to be plainly marked as drawn under this Letter of Credit No. and to be signed in accordance with specimen signature which you will find on our Letter of Indication of the same number to be produced herewith.

We engage that such drafts shall meet with due honour if negotiated within months from this date, and request you to buy them at the rate at which you purchase demand drafts on London.

The amount of each draft must be inscribed on the back of this letter. The letter itself must be cancelled, and attached to the final draft drawn.

We are, Gentlemen,
Your obedient servants,

To Messieurs the Bankers
mentioned in the Letter of Indication
which must be produced herewith.

N.B.—The bearer, for purposes of security, is requested to carry this Letter of Credit apart from the Letter of Indication.

A specimen form of a Letter of Indication is given under LETTER OF INDICATION.

On the back of the Letter of Credit particulars of the various payments must be noted, viz.—

Date when paid; By whom paid; Name of town where paid; Sterling amount expressed in words; Amount in figures.

A circular letter of credit is one which is addressed to all the correspondents of the issuing bank, and a direct credit is addressed to a specified correspondent.

Circular Letters of Credit are issued for the use of persons who are travelling abroad. (See also CIRCULAR CHEQUES, CIRCULAR NOTES.)

When a payment is to be made under a Letter of Credit, the signatures of the grantor on the Letter of Indication and Letter of Credit should be verified, as well as the signature of the person requiring the money, with the specimen on the Letter of Indication. It is necessary, as a matter of precaution, that the signature of the bearer of the letter should be written in the banker's presence.

The Letter of Credit should be read carefully and the various points attended to. The total amount already paid should be ascertained from the indorsements, and care must be taken, in making a payment, to see that the amount expressed in the letter is not exceeded, also that the period within which the credit is available has not expired.

The banker who cashes the draft which exhausts the amount mentioned in the Letter should cancel the Letter of Credit, and attach it to the final draft.

A draft under the credit should bear the number and date of the credit, and on its arrival in this country must be stamped with a twopenny stamp. A letter of credit granted in the United Kingdom authorising drafts to be drawn out of the United Kingdom payable in the United Kingdom is exempt from stamp duty. (See Exemption 4 under BILL OF EXCHANGE.) A letter of credit for use in the United Kingdom must be stamped twopence.

When a Letter of Credit is issued, the amount is debited to the customer's account and credited to a separate account to meet drafts drawn by the grantee. Any unused part of the amount is repaid to the customer. When a Letter of Credit is issued the amount should be debited to an account in the General Ledger and credited to another account in that Ledger, and reversing entries made in those accounts whenever a payment is made under the Credit. This enables the banker to ascertain at any time the total of his liability under Letters of Credit. (See LETTER OF CREDIT, LETTER OF INDICATION.)

CIRCULAR NOTES. Notes issued for the special use of travellers, and which can be cashed at any of the issuer's correspondents, a list of which accompanies the Letter of Indication. The Letter of Indication gives the numbers of the notes, the name of the person to whom they have been issued, and a specimen of his signature. The Letter of Indication should be retained by the holder until all the notes have been cashed, when it is to be surrendered to the banker cashing the last note. For security, the Letter of Indication and the notes should be carried apart. If a note is lost, repayment may usually be obtained against a satisfactory

indemnity. If the Letter of Indication and the notes are lost and the finder forges the loser's name and succeeds in cashing the notes, the loser will not be able to recover the amount from the issuing banker. (*Rhodes* v. *London and County Bank* (1880), *Journal of the Institute of Bankers*, Vol. I, p. 770.)

Circular notes may be for amounts of, say, £5, £10, £20, or £50, each denomination being usually printed in distinctive colours.

The following is a specimen of a circular note—

London 19 .

No. .

Circular Note for Ten Pounds. £10.

GENTLEMEN—

This note will be presented to you by whose signature you will find in our Letter of Indication No. to be produced herewith. We request you to pay to order the value of Ten Pounds at the current rate of exchange against proper indorsement.

Your obedient servants,

Messieurs the Bankers
mentioned in our Letter of Indication.

On the back of the note is printed—

£10. At sight pay to the order of
Ten Pounds value received at this
day of 19 .
(Sign here.)

A specimen form of a Letter of Indication is given under LETTER OF INDICATION.

When circular notes are presented for payment the notes and Letter of Indication must be carefully scrutinised to see that everything is in order. The indorsement on the notes of the person requiring the money should, as a matter of precaution, be written in the presence of the banker, and compared with the specimen signature on the Letter of Indication.

The issuing banker will refund the amount of any unused notes returned to him.

A circular note is exempt from stamp duty (see under BILL OF EXCHANGE, EXEMPTION 4), but the form on the back of the note, being the same as a foreign bill, requires a stamp of twopence if on demand or at sight or not exceeding three days after date or sight; if otherwise, the usual *ad valorem* foreign bill stamp is required. Circular notes are now practically obsolete (1949), travellers' cheques having taken their place. (See LETTER OF INDICATION, TRAVELLERS' CHEQUES.)

CIRCULATING CAPITAL. Circulating capital fulfils the whole of its office in the production in which it is engaged, by a single use. John Stuart Mill says: "The term, which is not very appropriate, is derived from the circumstance that this portion of capital requires to be constantly renewed by the sale of the finished product, and when renewed is perpetually parted with in buying materials and paying wages; so that it does its work, not by being kept, but by changing hands." Fixed capital, on the contrary, does its work by being kept. Circulating assets include stock in hand, trade debtors, work in progress, and bills receivable. (See BALANCE SHEET, CAPITAL.)

CIRCULATING MEDIUM. The medium or means by which purchases and sales are effected. The term is applied to gold, silver, and copper coins, also to bank notes, cheques, bills, and other paper instruments, which act as substitutes for coins. The various articles, such as shells, salt, skins, etc., used in former ages, and even at present in certain countries, are also included under the term circulating medium. (See MONEY.)

CLARE CONSTAT. (See PRECEPT OF CLARE CONSTAT.)

CLAYTON'S CASE. This is the name of a case decided in 1816, and reported in 1 Mer. 529 *et seq.* (sometimes quoted as *Devaynes* v. *Noble*), which is always referred to as the leading authority upon what is known as the "appropriation of payments." If a debtor owes more than one debt to his creditor, and pays him a sum of money insufficient to liquidate the whole of the debts, it is sometimes a matter of importance, in view of the Limitation Act, 1939, to know to which debts the payment is to be appropriated. From *Clayton's* case the following rules are derived, mainly taken from the Roman Law: (1) A debtor making a payment has a right to appropriate it to the discharge of any debt due to the creditor; (2) if at the time of payment there is no express or implied appropriation thereof by the debtor, then the creditor has a right to make the appropriation; (3) in the absence of any appropriation by either debtor or creditor, an appropriation is made by presumption of law, according to the items of account, the first item on the debit side being the item discharged or reduced by the first item on the credit side. The principle of the case was thus explained (see p. 608 of the report)—

"This is the case of a banking account,

where all the sums paid in form one blended fund, the parts of which have no longer any distinct existence. Neither banker nor customer ever thinks of saying, 'This draft is to be placed to the account of the £500 paid in on Monday, and this other to the account of the £500 paid in on Tuesday.' There is a fund of £1,800 to draw upon, and that is enough. In such a case, there is no room for any other appropriation than that which arises from the order in which the receipts and payments take place, and are carried into the account. Presumably, it is the sum first paid in that is first drawn out. It is the first item on the debit side of the account that is discharged, or reduced, by the first item on the credit side. The appropriation is made by the very act of setting the two items against each other. Upon that principle all accounts current are settled, and particularly cash accounts. When there has been a continuation of dealings, in what way can it be ascertained whether the specific balance due on a given day has, or has not, been discharged, but by examining whether payments to the amount of that balance appear by the account to have been made? You are not to take the account backwards, and strike the balance at the head, instead of the foot, of it. A man's banker breaks, owing him, on the whole account, a balance of £1,000. It would surprise one to hear the customer say, 'I have been fortunate enough to draw out all that I paid in during the last four years; but there is £1,000 which I paid in five years ago that I hold myself never to have drawn out; and, therefore, if I can find anybody who was answerable for the debts of the banking house, such as they stood five years ago, I have a right to say that it is that specific sum which is still due to me, and not the £1,000 that I paid in last week.' "

The Earl of Selborne, L.C., in *In re Sherry, London and County Banking Company* v. *Terry* (1884), 25 Ch.D. 692, said: "The principle of *Clayton's* case, and of the other cases which deal with the same subject, is this, that where a creditor having a right to appropriate moneys paid to him generally, and not specifically appropriated by the person paying them, carries them into a particular account kept in his books, he *prima facie* appropriates them to that account, and the effect of that is, that the payments are *de facto* appropriated according to the priority in order of the entries on the one side and on the other of that account. It is, of course, absolutely necessary for the application of those authorities that there should be one unbroken account, and entries made in that account by the person having a right to appropriate the payment to that account; and the way to avoid the application of *Clayton's* case, where there is no other principle in question, is to break the account and open a new and distinct account. When that is done, and the payment is entered to that new and distinct account, whatever other rule may govern the case, it certainly is not the rule of Clayton's case. . . ." (See BROKEN ACCOUNT.)

In *Deeley* v. *Lloyds Bank, Ltd.* (1912), 107 L.T. 465, Lord Shaw quoted (in connection with the above rule) the following with approval: "According to the law of England, the person paying the money has the primary right to say to what account it shall be appropriated; the creditor, if the debtor makes no appropriation, has the right to appropriate, and if neither of them exercises the right, then one can look on the matter as a matter of account and see how the creditor has dealt with the payment, in order to ascertain how he did in fact appropriate it; and if there is nothing more than this, that there is a current account kept by the creditor, or a particular account, kept by the creditor, and he carries the money to that particular account, then the Court concludes that the appropriation has been made, and having been made, it is made once for all, and it does not lie in the mouth of the creditor afterwards to seek to vary that appropriation." (See NOTICE OF SECOND MORTGAGE.)

In *Bradford Old Bank* v. *Sutcliffe* (1918), 34 T.L.R. 299, where there were two accounts, a loan account and a current account, it was held that the two accounts could not be considered as one, and that "payments to the credit of the current account are appropriated to that account and cannot be taken in reduction of the loan account." (See BROKEN ACCOUNT.)

The principle of *Clayton's* case does not apply where a person has mixed trust moneys with his own moneys in his account. The money which he first withdraws from the account is taken to be his own money, leaving the trust funds intact. (*In re Hallet's Estate* (1879), 13 Ch.D. 696.) But if the trust moneys of several persons have been paid into a customer's account the position is different. Where a solicitor had paid into his account moneys belonging to various clients, it was held that the rule in *Clayton's* case applied as between the

claimants to the trust moneys; that is, that the first trust money paid in is the first money drawn out. (*In re Stenning, Wood* v. *Stenning*, [1895] 2 Ch. 433.) The rule in *Clayton's* case is a rule of evidence and not of law, and if it can be shown that the intention of the parties was to avoid appropriation under the rule, it will have no application. A clause in a bank's form of charge or guarantee designed to avoid the operation of the rule will be efficacious. [*Westminster Bank* v. *Cond* (1940), 46 Com. Cas. 60.] (See APPROPRIATION OF PAYMENTS, PARTNERSHIPS.)

"CLEAN" ACCEPTANCE. That is a "general acceptance." (See ACCEPTANCE, GENERAL.)

"CLEAN" BILL. A bill of exchange which is unsupported by shipping documents or other security. (See DOCUMENTARY BILL.)

"CLEAN" BILL OF LADING. (See BILL OF LADING.)

"CLEAN" CREDIT. A credit opened by a banker under which persons abroad may draw bills upon the banker, the banker undertaking to accept the bills if drawn in accordance with the conditions in the credit. It is called "clean" because the bills have no documents attached. Such a credit is granted only to firms of the highest standing, or against securities.

CLEAR DAYS. Section 141 (2) of the Companies Act, 1948, provides, *inter alia*, that 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. In *Re Hector Whaling Ltd.* (*The Times*, 3rd December, 1935), Bennett, J., held that the italicised words mean twenty-one clear days, exclusive of the day of service and exclusive of the day on which the meeting is held. A petition for confirmation of a reduction of capital, when the notice convening the meeting was dated 8th May, 1935, and it convened an extraordinary general meeting for 30th May, 1935, was accordingly adjourned to enable the company to call a fresh meeting, the special resolution not having been properly passed.

CLEARING AGREEMENT. (See EXCHANGE CLEARING AGREEMENT.)

CLEARING BANKS. The members of the London Bankers' Clearing House. Representatives of each clearing bank meet at the Clearing House and exchange cheques drawn upon the members or upon the country correspondents of members, or other London banks for which they are agents.

The members are—

Barclays Bank, Ltd.
Coutts & Company.
District Bank, Ltd.
Glyn, Mills & Company.
Lloyds Bank, Ltd.
Martins Bank, Ltd.
Midland Bank Ltd.
National Bank, Ltd.
National Provincial Bank, Ltd.
Westminster Bank, Ltd.
Williams Deacon's Bank, Ltd.

The Bank of England only clears outwards.

CLEARING HOUSE. The London Bankers' Clearing House was instituted, according to J. W. Gilbart, in 1775. Membership was originally confined to the private banks, and the Joint Stock Banks were not admitted until 1855. Each member of the Clearing House sends, by a clerk, to the Clearing House the cheques held upon other bankers who are members, or upon the country correspondents of any of the members, or other bankers for which they are agents. Each clerk hands over the cheques he has upon the other bankers and receives the cheques upon the bank which he represents. The cheques received by a clerk of A bank from, say, B bank are his "in" clearing, and the cheques given by him to that bank are his "out" clearing. At the end of the day the difference between the "in" and "out" clearing is the amount due to be paid by A to B or B to A, as the case may be. Each bank, however, does not settle separately with each other bank, but a form, called the summary sheet, is filled up, showing in two columns the amounts due to or owing from all the other members of the House.

The difference between the two columns is the net balance either to be received or to be paid. When the balance is due to be paid, that is, is against a bank, the bank transfers the amount due from its account at the Bank of England to the Clearing Bankers' account. The transfer is effected by means of a white ticket similar to form No. 1. (See page 159.)

If the balance is due to be received, the bank obtains a transfer of the amount from the Clearing Bankers' account to its own account at the Bank of England, by a green transfer ticket signed by the bank and an

The following is a specimen of the Town Clearing Balance Sheet, which includes the balance of the previous day's General Clearing

Cheques still bear on the left-hand bottom corner the letters T, or M or C, which denoted the particular clearing in which they were included before the war of 1939–1945.

BALANCE SHEET
TOWN CLEARING
WESTMINSTER

Charge					Pay			
				Bank				
				Barclays				
				Coutts				
				District				
				Glyn				
				Lloyds				
				Martins				
				Midland				
				National				
				Nat. Provincial				
				Westminster				
				Williams				
				C.H.				
				General Clearing				
				W/Ds GENERAL CLEARING				
				Town Unpaids				
				Balance				

Inspector of the Clearing House. (See form No. 2, page 159.)

For the names of the members of the London Clearing House, see CLEARING BANKS.

Before the outbreak of war in 1939, there were three clearings: Town, Metropolitan, and Country. On the commencement of war, the Clearing House was evacuated to Stoke-on-Trent. The Metropolitan and Country Clearings and part of the Town Clearing were merged into a new General Clearing, which included also articles previously cleared under the "Walks" system in London. The Town Clearing with a restricted area remained in London, but was used only for clearance of cheques paid in at Town Clearing branches drawn on Town Clearing branches.

On the return of the Clearing House to London, the General Clearing was continued, but the "Walks" system was reintroduced.

The total amount of cheques, bills, etc., which passed through the Clearing House in

	Millions
1839 was	£954
1868 ,,	£3,425
1907 ,,	£12,730
1913 ,,	£16,436
1918 ,,	£21,197
1920 ,,	£39,018
1927 ,,	£41,550
1928 ,,	£44,204
1930 ,,	£43,558
1936 ,,	£40,616
1937 ,,	£42,686
1938 ,,	£39,610
1939 ,,	£36,642
1940 ,,	£40,019
1941 ,,	£43,011
1942 ,,	£48,656
1943 ,,	£57,107
1944 ,,	£62,644
1945 ,,	£66,944
1946 ,,	£69,011
1947 ,,	£73,330
1948 ,,	£82,110

A weekly turnover of over one thousand millions was recorded for the first time in

FORM NO. 1

SETTLEMENT AT THE CLEARING HOUSE.

London, 19 .

To the Cashiers of the BANK OF ENGLAND,

Be pleased to TRANSFER from our Account the sum of and place it to the credit of the Account of the Clearing Bankers, and allow it to be drawn for, by any of them (with the knowledge of either of the inspectors, signified by his countersigning the Drafts).

£

SETTLEMENT AT THE CLEARING HOUSE.

BANK OF ENGLAND, 19 .

A TRANSFER for the sum of has this evening been made at the Bank, from the account of to the Account of the Clearing Bankers.

For the Bank of England,

£

This Certificate has been seen by me,

Inspector.

FORM NO. 2

SETTLEMENT AT THE CLEARING HOUSE.

London, 19 .

To the Cashiers of the BANK OF ENGLAND,

Be pleased to CREDIT our Account the Sum of out of the money at the credit of the account of the Clearing Bankers.

£

Seen by me,

Inspector at the Clearing House.

SETTLEMENT AT THE CLEARING HOUSE.

BANK OF ENGLAND,

19 .

The account of has this evening been CREDITED *with the sum of out of the money at the credit of the account of the Clearing Bankers.*

£

For the Bank of England,

TOWN CLEARING

	Monday to Friday	Saturday	
Delivery			
Morning Clearing	9.0 a.m.	9.0 a.m.	First Deliveries
	9.30 a.m.	9.15 a.m.	Final Deliveries
Afternoon Clearing	2.30 p.m.	11.15 a.m.	First Deliveries
	3.30 p.m.	12.15 p.m.	Final Deliveries
Bank of England			
Dividend Warrants	11.30 a.m.	10.30 a.m.	Final Deliveries. (Items of £20,000 and over may be included in Afternoon Clearing as a separate charge)
Dockets			
Returned	11.15 a.m.	11.0 a.m.	Latest Time
Unpaids			
Morning Clearing	2.30 p.m.	11.30 a.m.	Technical Irregularities. Final Deliveries
	3.20 p.m.	12.10 p.m.	Want of Funds. Final Deliveries
Unpaids			
Afternoon Clearing	4.0 p.m.	12.45 p.m.	Final Deliveries
Agreement			
Morning Clearing	2.30 p.m.	11.30 a.m.	
Afternoon Clearing	3.30 p.m.	12.15 p.m.	
Settlement	4.0 p.m.	12.45 p.m.	

BANKERS' CLEARING HOUSE.
29.11.46.

the history of the Clearing House, the week ended 5th January, 1927, returning £1,031,194,000.

General Rules

Agreement of Morning Clearing. The total amount shall be agreed by each clearer before leaving the Clearing House.

Final Delivery. All Clerks who are in the Clearing House by the time appointed for final delivery, shall be entitled to deliver their articles, though they may not have been able to pass them to the different desks before the clock strikes.

Unpaids. All Returns in the Clearing House on the stroke of the clock, at the time appointed for final delivery, must be received by the Clearers and credited the same day. The Inspectors are instructed to close the doors and not re-open them until such returns have been delivered.

Returned in Error. Any Bank which has accepted and paid an article returned to it in error may require repayment through the Clearing House on the following day.

Uncrossed Returns. With regard to all Drafts not crossed, and all Bills not receipted, sent to the Clearing House as Returns, the Clearer holding them must fully announce the particulars to the Clearing House, and if not claimed, the draft must be handed to the Inspectors; but on no account can the Clearer be allowed to debit the Clearing House with the amount until an owner can be found.

Answer on Returns. No Return can be received without an answer in writing on the Return why payment is refused.

Answer on Return Sufficient. It shall be sufficient in order that a Return shall be received and credited, that it have on it an answer, why returned; and no Clearer shall refuse to pass to credit any Return that is so marked.

Missing Articles. All the differences arising from missing articles of over £2,000 must be finally ascertained and placed to account, before the Clearer makes up his Balance Sheet.

Drafts not to be entered at Clearing House. No Clearer shall be allowed to charge out Drafts in the Clearing-out Book at the Clearing House.

Differences Overlooked. All differences of more than £50,000 that may have been accidentally passed over at night, shall be settled by a transfer at the Bank of England, the first thing the next morning.

GENERAL CLEARING

Time Table

Delivery	9.0 a.m.	House open for First Deliveries, which should be made as early as possible.
	(Sats. 9. 0 a.m.)	
	10.15 a.m.	Final Charges delivered.
	(Sats. 10. 0 a.m.)	
Dockets	10.30 a.m.	Final Delivery.
	(Sats. 10.15 a.m.)	Every endeavour to be made to send dockets with charges.
	2. 0 p.m.	Dockets returned.
		Saturdays' Dockets to be returned to the Clearing House not later than 9.30 a.m. Monday.
		Dockets returned on Saturday should be at the Clearing House not later than 12 noon.
W/Ds	3. 0 p.m.	W/Ds to be returned to Clearing House and charged back to Crossing Bank.
	(Sats. 12. 0 noon)	
		Totals to be entered on the special sheets provided.
Late W/Ds		To be held over until 9.30 *a.m.* next day and charged back to Crossing Bank in *that day's work.*
Totals Called	12. 0 noon	Totals of "In and Out" Clearing and W/D sheets to be called to Chief Inspector from Town Clearing Balance Sheet.
Differences and Agreement	(Tues. 9.30 a.m. to Sat. incl.)	Agreement of previous day's work and adjustment of differences.
	(Mon. 10. 0 a.m.)	A representative from each Clearing Bank shall attend at the Clearing House. Differences to be adjusted on the "In and Out" Totals Sheet.
	2. 0 p.m.	Difference Memorandums to be delivered before 2.0 p.m. for settlement at 9.30 a.m. the following morning.
		No back-day differences to be adjusted on Saturdays except in special circumstances.
"In and Out" Sheets and W/D Sheets	10.30 a.m.	To be handed to Chief Inspector on the first business day after exchange of Clearing by 10.30 a.m.
	12. 0 noon	Total and W/D Sheets returned to a Bank for adjustment of errors to be returned to the Chief Inspector before 12.0 noon the same day.
Settlement		To be effected on the first business day after the exchange of Clearing, the "In and Out" totals to be entered on the Town Clearing Balance Sheet.

Marking Drafts after Close of Clearing. The latest time for marking shall be fifteen minutes after the last delivery of Returns.

Order in the Clearing House. The Inspectors are charged with the preservation of order and decorum in the Clearing House, and are instructed to report to the Committee of Bankers disorderly conduct on the part of any persons, calculated, in their opinion, to obstruct the adjustment of the business of the house.

There are provincial Clearing Houses at Birmingham, Bradford, Bristol, Hull, Leeds, Leicester, Liverpool, Manchester, Newcastle, Nottingham, Sheffield, and Southampton. These deal solely with cheques drawn on banks in the respective districts. Other cheques received for collection by banks in these towns are forwarded to London for clearance.

Before the war of 1939, a system of "local exchanges" was in vogue in the smaller towns in England and Wales, whereby each bank exchanged cheques on the other local banks and adjusted the balances due by banker's payments or through its head office. This practice was abandoned in most places during the 1939–1945 war and has not yet been fully resumed.

CLEARING HOUSE CERTIFICATES. To provide currency for their own use, banks had recourse, in the crisis of 1914, to Clearing House Certificates. They were secured by the deposit of securities with the Clearing House, and served as negotiable instruments to facilitate the clearing of balances as between the banks themselves. (See MORATORIUM.)

CLERGYMEN. Clergymen may be members, partners, or shareholders in an association or co-partnership, consisting of more than six members or shareholders, carrying on the business of banking and other trades and dealings for gain and profit, but it is not lawful for a clergyman "to act as a director or managing partner or to carry on trade or such dealing as aforesaid in person" (4 Vict. c. 14).

CLIENT ACCOUNT. Section 1 of the Solicitors Act, 1933, provided that the Council of the Law Society should make rules for the opening and keeping by solicitors at banks of accounts for clients' moneys. Accordingly the Solicitors' Accounts Rules came into force on 1st January, 1935. These were replaced on 1st January, 1945, by the Solicitors' Accounts Rules, 1945. At the same time an additional set of rules, known as the Solicitors' Trust Accounts Rules, 1945, came into force. These two codes are given in full under SOLICITORS' ACCOUNTS.

Where a garnishee order is served citing a solicitor customer as judgment debtor, his client's account(s) is attached. (*Plunkett and Another* v. *Barclays Bank, Ltd.*, "*The Times*," 14th March, 1936.) (See also SOLICITORS' ACCOUNTS; SOLICITORS ACT, 1933.)

CLIPPED MONEY. The name given to coins from which small pieces had been clipped by dishonest persons. The introduction of milling served to prevent the practice of clipping or filing the edges of coins.

CLOCK LOCK. A mechanical device on some safes by which it is made impossible to open them between certain hours.

CLOCK STAMP. An invention by which the actual time of receipt or payment of money may be impressed upon a paying-in slip or cheque.

CLOSING AN ACCOUNT. The voucher closing an account is, in some banks, pasted in the current account ledger at the account itself.

Where a customer calls to withdraw his balance, it is desirable that the cheque should contain, after the amount, such words as "being the balance of my account with interest to date."

A customer wishing to transfer his account to another town and not being aware of the amount of interest which is due to him, may send the banker a cheque filled up, e.g. "Pay the X & Y Bank, Ltd., Leeds, the balance of my account Two hundred and fifty pounds with interest due upon the account to date."

"£ ," leaving the banker to supply the figures.

When an account has to be transferred from one branch to another of the same bank, it is advisable (though not strictly necessary) that a cheque should be signed.

Before paying the balance of an account to a customer, the banker will, of course, ascertain the amount of any outstanding cheques there may be and reserve that sum in the account to meet them. If a cheque is presented which has not been provided for in this way, the banker can return it unpaid, marked "account closed."

When an account is closed, all unused cheque forms should be returned to the banker.

Where a customer closes his account, the banker cannot compel him to take up any bills which there may be under discount at the time of closing.

In the case of an unsatisfactory account the banker is entitled to request the customer to close it. If the account is in credit the banker may decline to accept any further payments to credit. Reasonable notice must be given.

In *Prosperity, Limited* v. *Lloyds Bank, Ltd.* (1923), 39 T.L.R. 372 the plaintiffs claimed a declaration that the defendants were not entitled to close their banking account without giving the plaintiffs reasonable notice. On 14th February the defendants informed the plaintiffs that the defendants would cease to exist as bankers to the plaintiffs after 14th March. McCardie, J., in the course of his judgment, said "that there was no doubt that a banker had a right to close at any time an account which was in debit, but in the case of an account which was in credit he must give a reasonable notice, which would vary according to circumstances; and there might be special arrangements between the banker and the customer as to what notice would be required. In the absence of any special arrangement, he had to consider in the present case whether a month's notice was sufficient. The position of the defendants as bankers was interwoven with the scheme of insurance evolved by the plaintiff company—the result of the arrangement originally made with the manager of the defendants' local branch. . . . Having regard to the nature of the scheme, and the number of forms of application which had been sent out, he had come to the conclusion that a month's notice was not adequate in the circumstances—it did not give the plaintiffs a sufficient opportunity to make fresh arrangements."

"Closing an account" is sometimes used with a meaning equivalent to "stopping an account." A company's account is "stopped" when the company is to be wound up voluntarily or by order of the Court. (See WINDING UP.) An account may be "stopped" for various reasons. (See under BANKRUPT PERSON, DEATH OF CUSTOMER, DEATH of PARTNER, DEBTS—ASSIGNMENT OF, GARNISHEE ORDER, GUARANTEE, LUNACY, NOTICE OF SECOND MORTGAGE, RECEIVER.)

CLOSING ENTRIES. The entries by which the balances of subsidiary accounts are carried to their principal accounts at balance times, e.g. interest, discount, and commission to profit and loss account.

CLOSING PRICES. The prices for stocks and shares which are quoted on a Stock Exchange at the close of business.

CLUBS. (See SOCIETIES.)

CODICIL. A supplement to a will, by which a testator is able to add to what is contained in the will or to make any alteration which he may desire.

A codicil must be dated and signed by the testator and attested by two witnesses in the same manner as a will. (See WILL.)

COGNOVIT ACTIONEM. (Latin, He has recognised the action.) A written acknowledgment by a debtor admitting his liability in an action, and giving authority to his creditor to take the necessary steps to obtain judgment against him. A cognovit is usually given by a debtor in consideration of further time being given for payment. (See WARRANT OF ATTORNEY.)

COHEN COMMITTEE. The name popularly given to the Committee on Company Law Amendment appointed by the President of the Board of Trade in 1943, under the chairmanship of Mr. Justice Cohen, to consider and report on the major amendments desirable in the Companies Act, 1929. The Committee's report was published in June, 1945, and its recommendations embodied in the Companies Bill introduced into the House of Commons in 1946. This duly became law, as the Companies Act, 1947, the greater part of which was repealed, as was also the whole of the 1929 Act, and both were re-enacted by the consolidating Companies Act, 1948.

COINAGE, COINS. Many substances have been used in different countries as money, but a metal of some kind has been found to be the most suitable in all respects, and of all metals gold and silver have been selected as the best fitted to act as a coinage. The properties which should be possessed by the material of which coins are made are enumerated by Professor W. S Jevons in the order of their importance: (1) Utility and value; (2) portability; (3) indestructibility; (4) homogeneity (that is, all parts of the same quality); (5) divisibility; (6) stability of value; (7) cognisability (that is, easily recognised).

The early records of the use of metal as money show that the metal was weighed. The inconvenience, however, of having to use scales and weights on every occasion when the metal was to be exchanged, led to the invention of coins. The metal, or bullion, was divided into small pieces, each portion or coin being of a certain weight. In the course of time a public stamp was placed upon each coin, so that anyone might recognise it as having a definite weight, and know that the metal so stamped was also of

a certain quality. The standard coinage of Great Britain was gold sovereigns and half-sovereigns. Since 1914, however, they have ceased to circulate and cannot be obtained in exchange for gold bullion at the Mint or Bank of England.

The token coinage (*q.v.*) of Great Britain was silver and bronze, but by the Coinage Act, 1946, cupro-nickel coins were substituted for the silver coinage, consisting of three-quarter copper and one-quarter nickel. The silver coinage originally consisted of $\frac{37}{40}$ and $\frac{3}{40}$ alloy. After the first German war the high price of silver resulted in the silver content being reduced to one-half. After 1945, however, the world shortage of silver and its high price, coupled with the liability to repay the United States 88,000,000 ounces borrowed during the war on lease-lend, forced the Government to withdraw the silver coinage and substitute cupro-nickel coins. Gold coins issued from the Australian mints at Sydney, Melbourne, and Perth are legal tender. The coins which were issued from the Mint in London are shown below, being the first Schedule to the Coinage Act, 1870, allowing for the corrections made by the Act of 1891, as to the remedy allowance, and showing the alterations made by the Coinage Act, 1920, as to the fineness.

In March, 1937, was authorized the issue of a duodecagonal threepenny piece composed of copper, nickel, and zinc, and weighing 105 grains.

The weight and fineness of the coins mentioned in this Schedule are (subject to the above-mentioned alterations) according to what is provided by the Act fifty-six George the Third, chapter sixty-eight, that the gold coin of the United Kingdom of Great Britain and Ireland should hold such weight and fineness as were prescribed in the then existing Mint indenture; that is to say, that there should be nine hundred and thirty-four sovereigns and one ten-shilling piece contained in twenty pounds weight troy of standard gold, of the fineness at the trial of the same of twenty-two carats of fine gold and two carats of alloy in the pound weight troy; and further, as regards silver coin, that there should be sixty-six shillings in every pound troy of standard silver of the fineness of eleven ounces two pennyweights of fine silver and eighteen pennyweights of alloy in every pound weight troy.

By the Gold Standard Act, 1925, the Bank of England was put under obligation to sell gold bullion, in amount not less than 400 fine ounces, in exchange for legal tender at the fixed price of £3 17s. 10½d. per standard ounce. Subsection (2) of Section 1 of the Gold Standard Act, 1925, was suspended on 21st September, 1931, and the Bank relieved of this obligation. (See GOLD STANDARD ACT, 1925.)

FIRST SCHEDULE TO THE COINAGE ACT

Denomination of Coin.	Standard Weight.		Least Current Weight.		Standard Fineness.	Remedy Allowance.		
						Weight per piece.		Millesimal Fineness.
	Imperial Weight. Grains.	Metric Weight. Grams.	Imperial Weight. Grains.	Metric Weight. Grams.		Imperial Grains.	Metric Grams.	
Gold—								
Five Pound	616·37239	39·94028	612·50000	39·68935	Eleven-twelfths fine gold, one-twelfth alloy; fineness 916·6	1·00	·06479	2
Two Pound	246·54895	15·97611	245·00000	15·87574		·40	·02592	
Sovereign	123·27447	7·98805	122·50000	7·93787		·20	·01296	
Half-sovereign	61·63723	3·99402	61·12500	3·96083		·15	·00972	
Silver—								
Crown	436·36363	28·27590			Thirty-seven-tieths fine silver, three-tieths alloy; or millesimal fineness 925 Altered by 1920 Act to:—one-half fine silver, one-half alloy; or millesimal fineness 500	2·000	·1296	4 Altered by 1920 Act to:— 5
Half-crown	218·18181	14·13795				1·264	·0788	
Florin	174·54545	11·31036				·997	·0646	
Shilling	87·27272	5·65518				·578	·0375	
Sixpence	43·63636	2·82759				·346	·0224	
Groat or Fourpence	29·09090	1·88506				·262	·0170	
Threepence	21·81818	1·41379				·212	·0138	
Twopence	14·54545	·94253				·144	·0093	
Penny	7·27272	·47126				·087	·0056	
Bronze—								
Penny	145·83333	9·44984			Mixed metal, copper, tin, and zinc.	2·91666	·18899	none
Halfpenny	87·50000	5·66990				1·75000	·11339	
Farthing	43·75000	2·83495				·8750	·05669	

Gold and silver in a pure state are too soft to be used for the purpose of coins, and they were, therefore, mixed with another metal, called an alloy, in order to harden them. Fine gold is the term used for gold which is absolutely pure. Standard gold is pure gold mingled with alloy according to the legal standard. The column, in the above Schedule headed "standard fineness," shows the proportion of alloy in the gold and silver coins. The "standard weight" is also shown and the "least current weight" of gold coins. When a gold coin has been in circulation for some time, it becomes worn and consequently reduced in weight. When the weight of a coin falls below the "least current weight," it ceases to be legal tender, but that fact does not prevent light gold coins from passing freely in circulation, as people do not, as a rule, pay much attention to the weight of a coin so long as the government stamp is not entirely worn off. The last columns in the Schedule show the "remedy allowance," that is, a remedy (or variation from the standard weight and fineness specified in the Schedule) which is allowed, not exceeding the amount specified in that Schedule. The allowance is necessary because of the difficulty in making coins absolutely according to the standard weights and fineness.

Pre-Victorian gold coins are not now current. Silver coins coined before 1816 and copper coins before 1861, are not now legal tender.

The obverse side of a coin is that which bears the head or more important device; the reverse is the other side.

The milling is introduced on the edges of coins in order to make it more difficult for fraudulent persons to clip the coins.

A process used by mints to decipher a worn silver coin is to dip the coin in a solution of nitric acid, 1·25 density, and to rinse it in distilled water.

COLLATERAL SECURITY. This term is used in three senses; in the Stamp Act, 1891, it means additional as opposed to primary security (see COLLATERAL STAMPING); occasionally it is used colloquially to signify impersonal security (such as stocks and shares) as opposed to personal security (such as a guarantee); more usually it is used to describe security lodged by a third party. Collateral security, in this latter sense, has the advantage over security lodged by the borrower, that in the case of the latter's failure its value does not have to be deducted for proof purposes, but a claim can be made against the debtor's estate for the whole sum due and recourse made on the collateral security for the deficiency. Any realisation from collateral security should be credited to a supense account pending receipt of a final dividend from the debtor's estate. Security deposited by a partner in his own right to secure his firm's advance can be regarded as collateral.

Collateral or third party security may be charged direct on a special form, with or without a limit as to its availability, or a guarantee may be taken from the third party who will charge his security directly in support of the guarantee. On notice of the death of the depositor of collateral security, the principal debtor's account must be broken unless the security has been charged in support of the deceased's guarantee, when action will depend on the terms of the guarantee.

COLLATERAL STAMPING. This method particularly applies to instruments expressly drawn to cover all sums due or to become due. The word "collateral" is loosely used in relation to securities, but it has the specific meaning of "secondary" (as opposed to primary), "auxiliary" or "additional" in relation to stamping.

Where two or more mortgages are taken as security at the same time, one of them, or where a further mortgage is taken in addition to one already held, the earliest dated document, must be treated as the primary security and stamped to cover the highest amount of the total advance at the rate of 5s. per cent, and the remaining or subsequent mortgages must be treated as collateral or secondary securities and stamped at the rate of 1s. per cent on the highest amount of the total advance, with a maximum duty of 10s. on each form so stamped. In addition to the impressed red duty stamp, a blue "duty paid" stamp is impressed denoting the duty paid on the primary security.

Likewise, where a mortgage deed is already held and additional security is lodged and a charge taken thereover, the original mortgage must be stamped additionally to cover the increased amount of the total advance at the rate of 5s. per cent, and the new mortgage form must be stamped collaterally at the rate of 1s. per cent on the total amount of the advance, with a maximum duty of 10s. An example will make this clear.

Deeds valued at £1,500 are lodged to secure a total indebtedness of £1,000, and a mortgage under seal is taken to secure the

advance. The mortgage form is stamped for £2 10s. (i.e. at the rate of 5s. per cent on the total advance, not on the value of the security). Later, the borrower desires to increase his debt to £1,800 and lodges further deeds valued at £800 as additional security, signing a legal mortgage over the second parcel of deeds. The original mortgage will be regarded as the primary security and will be additionally stamped to cover the increased advance of £1,800, i.e. further stamp duty of £2 (5s. per cent on £800) will be impressed on the mortgage form, the necessary certificate that 30 days have not elapsed since the original amount of £1,000 has been exceeded being furnished at the time of stamping. The new mortgage form will be stamped 10s., the maximum duty attracted at 1s. per cent on the increased advance of £1,800, and will be branded in addition with a blue duty-paid stamp of £4 10s. denoting the total for which the primary security is stamped. Both the forms must be presented for stamping at the same time.

Where the primary security is withdrawn, the first collateral security in point of date becomes the primary security and the duty-paid stamp thereon denotes the effective amount for which the security is available.

Equitable mortgages (under hand) taken collaterally require stamping at 2s. per cent as in the case of the primary security.

In cases where a further limited form of charge has been taken to obtain additional cover when the original mortgage was limited, the new form should be stamped with primary duty as 5s. per cent to cover the amount of its limit. The amount of the cover available will be represented by the total stamping on the two forms. Alternatively, if the new form is unlimited, it should be stamped with primary duty at 5s. per cent in respect of the additional cover required and should be denoted under Sect. 87 (3) of the Stamp Act with the amount of stamping on the earlier document; collateral duty is not payable. These are the only cases where more than one primary document may be held to secure the same advance.

Where the original mortgage is unlimited but collateral mortgages contain a limit, the duty payable on the latter will be 1s. per cent on the amount of the limit (with a maximum of 10s.), but they may bear denoting stamps to the full extent of the primary stamping.

COLLECTING BANKER. A banker must act with due care and diligence in presenting for payment cheques paid in for collection, and neglect to use the customary and recognised channels may involve him in loss. Where a cheque payable alternatively in London or Norwich was passed through the Country Clearing, and the customer's cheque drawn in reliance of its clearance in London, was dishonoured, evidence was called showing that it was banking custom to pass cheques so marked through the Town Clearing and damages were awarded to the customer accordingly. (*Forman* v. *Bank of England*, (1902), 18 T.L.R. 339.)

The collecting banker must give his customer due notice of any cheques paid in for collection returned unpaid and cannot debit his customer with such cheques if notice is not duly given. Notice of dishonour should be given notwithstanding that the banker confirms any irregularity and re-presents the cheque without returning it to the customer.

A banker collecting a cheque drawn on another bank or branch may be a holder for value or an agent for collection according as he is collecting the cheque for himself or for his customer. He is a holder for value where he exchanges or cashes the cheque forthwith for his customer, where he receives the cheque in specific settlement of an account, and where he expressly or impliedly allows his customer to draw against the cheque before clearance.

In *A. L. Underwood, Ltd.*, v. *Barclays Bank, Ltd.*, [1924] K.B. 775, Scrutton, L.J., in the course of his judgment said: "The cases where an agent for collection becomes a holder for value must turn on an express or implied agreement between bank and customer that the latter may draw against the cheques before they are cleared. Though the cheques were in fact credited to the customer's account before they were cleared, the customer was not informed of this, and I can see nothing to prevent the bank from declining to honour the cheque if the payment in, against which it was drawn, had not been cleared." Atkin, L.J., said: "The mere fact that the bank in their books enter the value of the cheques on the credit side of the account on the day on which they receive the cheques for collection does not, without more, constitute the bank a holder for value. To constitute value, there must be, in such a case, a contract between banker and customer, express or implied, that the bank will, before receipt of the proceeds, honour cheques of the customer drawn against the cheques."

Contrariwise, the placing of a crossed cheque to the credit of a customer's account before clearance does not deprive a banker of his function as collecting agent, by virtue of the Bills of Exchange (Crossed Cheques) Act, 1906 (*q.v.*).

The position of a collecting banker when he collects a cheque for a customer or for a stranger, either with a forged indorsement or a defective title, and when he cashes a cheque for a customer or a stranger under the same conditions, is indicated below.

A banker should not collect a crossed cheque for a stranger, as he will be liable to the true owner if the stranger had no title to the cheque. In collecting a crossed cheque for a customer, to gain the protection of Section 82 of the Bills of Exchange Act, 1882, the banker must act in good faith and without negligence, and the protection is only as against the true owner. (See CROSSED CHEQUE, where reference is also made to the Act of 1906, which extends Section 82 of the Bills of Exchange Act.) As to what constitutes a person a customer, see CUSTOMER.

See the case of *Hampstead Guardians* v. *Barclays Bank, Ltd.*, under CURRENT ACCOUNT, where it was held that a flaw in the chain of identification of the customer ought to have put the bank on inquiry.

In *Lloyds Bank, Ltd.* v. *Savory & Co.*, the House of Lords by a majority of 3 to 2, affirmed the decision of the Court of Appeal (reversing the decision of the Lower Court) that it is negligence not to inquire as to the nature of a customer's employment and the name of his employer, if any. Likewise, the same inquiries are necessary where the account of a wife of an employee is involved.

The particular facts concerned two clerks employed by a firm of stockbrokers who stole the firm's cheques payable to third parties or bearer. In the one case the cheques were paid into the clerk's own account; in the other case they were paid into his wife's account. In the first case the bank knew that its customer was a stockbroker's clerk but did not know who were his employers, relying on the introduction of another clerk, well known locally. In the second case, the wife of the clerk was introduced by her landlady. The case was complicated by the use of the branch credit system, the bulk of the cheques having been paid in at City Offices for the credit of the respective accounts at country branches.

In the House of Lords the case was dealt with on the lines that the cheques were paid in at the branches where the accounts were conducted, on the grounds that the branch credit system was of the bank's own devising, and that if adequate safeguards were not taken to prevent this system being used in fraud of the true owners of cheques, banks must suffer any loss arising.

As a result of this decision, it is now the practice of banks to make inquiries as to a new customer's employer, if any, and in the case of women customers, as to their husband's employment and employer, if any.

Systems have also been devised whereby cheques payable to third parties tendered

	COLLECTED				CASHED			
	For Customer.		For Stranger.		For Customer.		For Stranger.	
	Forged Indorsement.	Stolen, Indorsement Genuine or Bearer Cheque.	Forged Indorsement.	Stolen, Indorsement Genuine or Bearer Cheque.	Forged Indorsement.	Stolen, Indorsement Genuine or Bearer Cheque.	Forged Indorsement.	Stolen, Indorsement Genuine or Bearer Cheque.
Uncrossed cheque on another bank.	Liable to true owner.	Liable to true owner.	Liable to true owner.	Liable to true owner.	Liable to true owner.	Not liable to true owner, as banker is a holder in due course.	Liable to true owner.	Not liable to true owner, as banker is a holder in due course.
Crossed cheque on another bank.	Not liable to true owner. Protected by Section 82.	Not liable to true owner. Protected by Section 82.	Ditto.	Ditto.	Ditto.	Ditto.	Ditto.	Ditto.
Crossed cheque "not negotiable" on another bank.	Ditto.	Ditto.	Ditto.	Ditto.	Ditto.	Liable to true owner.	Ditto.	Liable to true owner.

for collection under the branch credit system are remitted to the branch where the account is kept, and not sent forward for collection forthwith if the circumstances of the transaction are in any way doubtful.

A collecting banker should see that the indorsements of all order cheques received for collection are correct. In *Bavins Junr. and Sims* v. *London and South Western Bank*, [1900] 1 Q.B. 270, the Court of Appeal held that the collecting bankers were guilty of negligence in failing to observe that an indorsement did not agree with the name of the payee.

In a judgment of the Privy Council in *Commissioners of Taxation* v. *English, Scottish, and Australian Bank, Ltd.* (1920), 36 T.L.R. 305, Lord Dunedin said "the test of negligence is whether the transaction of paying in any given cheque, coupled with the circumstances antecedent and present, was so out of the ordinary course that it ought to have aroused doubts in the bankers' minds and caused them to make inquiry." (See further remarks in this case under CUSTOMER.)

A banker should not collect for the credit of an agent's private account cheques payable to his principal, unless authorised in writing by the principal.

Where a cheque is payable to "A B per X," "X is not authorised to receive the money as his own, or to deal with it except for his principals." (See the case *Slingsby and others* v. *The District Bank, Ltd.*, under INDORSEMENT.)

It has been held to be negligence to take a cheque payable to a partnership for the credit of the private account of one of the partners without inquiring from the other partners whether he is entitled to deal with it as owner. (*Bevan* v. *National Bank* (1906), 23 T.L.R. 65.)

In *Souchette, Ltd.* v. *London County Westminster & Parr's Bank, Ltd.* (1920), 36 T.L.R. 195, where cheques payable to a third party "or bearer" were credited to the account of T. Matthews, one of the directors who had drawn the cheques on behalf of the company, it was held that the collecting banker was not negligent in collecting those cheques as the banker was entitled to suppose that the directors who drew these cheques drew them to "bearer" for convenience in order that they might be dealt with by the bearer for the benefit of the company. But where the cheques were payable to a third party "or order," and they were credited to the account of T. Matthews, who had forged the indorsements, it was held that the bank was negligent. (Other points in this case are referred to under ALTERATIONS, CONVERSION.)

(See the case of *A. Stewart & Son of Dundee, Ltd.* v. *Westminster Bank*, under AGENT.)

It is contrary to ordinary business procedure for a limited company to pay a debt due to an official by means of a cheque payable to itself.

In *Hannan's Lake View Central, Ltd.* v. *Armstrong & Co.* (1900), 16 T.L.R. 236, the secretary of the plaintiff company indorsed a crossed cheque, payable to the company, and paid it into his private account. It was held that the bank had not acted "without negligence," seeing that they knew the company had an account at another bank and that it was apparent that the secretary was using for himself a valuable document which was, upon its face, the property of his employers.

In *A. L. Underwood, Ltd.*, v. *Bank of Liverpool and Martins, Limited* (1924), 40 T.L.R. 302, the sole director and practically the sole shareholder of the company indorsed for the company cheques payable to the company and paid them into his private account. In the action brought by the company against the bank for conversion of the cheques, the bank claimed the protection of Section 82 of the Bills of Exchange Act on the ground that they collected the cheques in good faith and without negligence, and they relied on the ostensible authority of the sole director to deal with the cheques in that way. Bankes, L.J., in the course of his judgment said that the cheques were plainly on the face of them the property of the company. Held that there was not only negligence on the part of the bank, but such an absence of ordinary inquiry as to disentitle the bank from relying on a defence founded on the ostensible authority of the director. "I feel satisfied that the obvious inquiry whether the company had not got its own banking account would have put a stop to the fraudulent system adopted by the director, and I do not think that it lies in the mouth of the bank to say that an inquiry would have been useless."

In *London & Montrose Shipbuilding and Repairing Co., Ltd.* v. *Barclays Bank, Ltd.* (1925), 31 Com. Cas. 67, a crossed cheque payable to a limited company was collected for the credit of another limited company, the cheque having been indorsed over to the

latter company by the former company. The plaintiffs brought the action for damages for conversion of the cheque.

Mackinnon, J., in the course of his judgment for the defendants, said: "If there is in the appearance and details of the cheque, the nature of the persons dealing with it, and the circumstances under which it is presented for payment and collection, anything unusual or suspicious, and suggesting the necessity of inquiry for the protection of the apparent payee, then it will be the banker's duty to make those inquiries." It was held, however, that, upon the form of this cheque, and the personality of the people who indorsed it, and who, as indorsees, collected it through the defendant bank, there was nothing unusually suspicious or out of the ordinary practice of bankers which called upon the bank to make any inquiry of the payee to see whether the matter was in order.

In the Court of Appeal this decision was reversed however, possibly on the grounds that the cheque had been indorsed generally by one director and then specially by another to a company with which the first director was intimately associated. Mr Rayner Goddard, K.C. (now Lord Chief Justice Goddard) advised in this connection (*Journal of the Institute of Bankers*, Vol. 53, page 76) "as the cases stand at present, the only prudent course is for bankers to refuse to accept without inquiry or special instructions, cheques made payable to companies for accounts other than those of the payee. Of course, the bank may have knowledge of special arrangements or circumstances which render inquiry on their part unnecessary."

"If banks for fear of offending their customers will not make inquiries into unusual circumstances, they must take, with the benefit of not annoying their customer, the risk of liability because they do not inquire." (Scrutton, L. J., in the Underwood case.)

Where a cheque is paid into an account at the same branch on which the cheque is drawn, the protection of Section 60 is not available to the banker to the exclusion of Section 82. The bank cannot be treated merely as a paying bank. It is also a collecting bank protected or not by Section 82 according to whether negligence is present or not. See *Worshipful Company of Carpenters of the City of London* v. *British Mutual Banking Co. Ltd.*, [1937] 3 All E.R. 811, where an employee in fraud of the company paid into his account cheques drawn by the company on the same office payable to third parties. On appeal it was held that the bank in collecting the cheques was liable for conversion, being without the protection of Section 82 on the ground of negligence.

To escape liability for conversion it must show that it is within both Sections 60 (or 80) and 82 of the Bills of Exchange Act, 1882.

Where there has been a series of fraudulent dealings with cheques, undetected by the true owner, it is no defence to say that the bank was "lulled to sleep." "Neglect of duty does not cease by repetition to be neglect of duty." (*Bank of Montreal* v. *Dominion Gresham Guarantee & Casualty Co.*, [1930] A.C. 659.)

Cheques are often crossed "account payee" or "account John Jones." Such words are not provided for in the Bills of Exchange Act, 1882, but a collecting banker would, no doubt, be considered negligent if he placed a cheque so crossed to any account other than that indicated in the crossing. (See ACCOUNT PAYEE.) It is desirable that all order cheques paid to credit should be indorsed by customers.

In the case of a cheque payable on condition of a receipt being signed, it should be collected only for the payee, as the document is not considered to be transferable. (See RECEIPT ON CHEQUE.)

See the case of *Morison* v. *London County & Westminster Bank* under PER PRO. (See HOLDER FOR VALUE.)

COMBINING ACCOUNTS. (See SET-OFF.)

COMMANDITE PARTNERSHIP. COMMANDITE, SOCIÉTÉ EN. In France a form of partnership where some of the partners merely supply part of the capital, and do not take any part in the management of the business. Such partners are called *commanditaires* and are liable for losses only to the extent of the sums which they have contributed.

For the English equivalent, see LIMITED PARTNERSHIP.

COMMISSION ON CURRENT ACCOUNTS. Where the work involved on a current account is not compensated for by the maintenance of an adequate credit balance, a commission charge is made. The basis of such charge varies: in the North of England, for example, it is customary to base the charge on the turnover (i.e. the total of cheques debited to the account), the rate varying from $\frac{1}{4}$ per cent to $\frac{1}{32}$ per cent on such turnover. Elsewhere it is customary

to make a commission charge based on the number of cheques drawn as expressed in the number of ledger pages or sheets used. The sundry services rendered to a current account holder, such as the payment of standing orders, the collection of credit information, etc., will also be included in any commission charge.

Whilst a banker usually enters into a bargain with his customer as to the conditions under which a current account will be kept, he could probably sustain a reasonable commission charge against his customer, although the latter had not expressly agreed to the charging thereof. "Apart from agreement to the contrary, either express or implied from the previous course of business, a banker has a right to a fair and adequate recompense for the services which he renders to his customer" (Heber Hart).

On the other hand, in the Westminster County Court on 4th December, 1936, the judge held that the fact that a bank had given notice to its customer that a suitable charge would be made unless a remunerative current account balance were kept did not entitle it to charge merely because in their opinion the balance was not sufficient. Due notice ought to have been given of the intention to charge.

(See also CHARGES.)

COMMISSIONS TO UNDERWRITERS. (See UNDERWRITING.)

COMMITTEE, LUNACY. Where a person is found by inquisition—that is, by a legal inquiry—to be insane and incapable of managing his affairs, the person who is appointed to look after his interests is called a "committee." This is a rare method. Where the committee consists of several persons, they should all join in signing cheques. (See LUNACY.)

COMMITTEE OF INSPECTION. The persons appointed by the creditors to superintend the administration of a bankrupt's property by the trustee. (See TRUSTEE IN BANKRUPTCY.)

The provisions of the Bankruptcy Act, 1914, are as follows—

"Section 20. (1) The creditors qualified to vote may, at their first or any subsequent meeting, by resolution appoint a committee of inspection for the purpose of superintending the administration of the bankrupt's property by the trustee.

"(2) The committee of inspection shall consist of not more than five nor less than three persons. Such a person may be a creditor or the holder of a general proxy or general power of attorney from a creditor, but he cannot act until the creditor has proved his debt and the proof has been admitted; or he may be a person to whom a creditor intends to give a general proxy or general power of attorney, but he cannot act until he holds such proxy or power, and until the creditor has proved his debt and the proof has been admitted (s.s. (2)).

"(3) The committee of inspection shall meet at such times as they shall from time to time appoint, and, failing such appointment, at least once a month; and the trustee or any member of the committee may also call a meeting of the committee as and when he thinks necessary.

"(4) 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 at the meeting.

"(5) Any member of the committee may resign his office by notice in writing signed by him, and delivered to the trustee.

"(6) 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, his office shall thereupon become vacant.

"(7) Any member of the committee may be removed by an ordinary resolution at any meeting of creditors of which seven days' notice has been given stating the object of the meeting.

"(8) On a vacancy occurring in the office of a member of the committee, the trustee shall forthwith summon a meeting of creditors for the purpose of filling the vacancy, and the meeting may by resolution appoint another creditor or other person eligible as above to fill the vacancy.

"(9) The continuing members of the committee, provided there be not less than two such continuing members, may act notwithstanding any vacancy in their body; and, where the number of members of the committee of inspection is for the time being less than five, the creditors

may increase that number so that it does not exceed five.

"(10) If there be no committee of inspection, any act or thing or any direction or permission by this Act authorised or required to be done or given by the committee may be done or given by the Board of Trade on the application of the trustee."

The Board of Trade may, on application by the committee of inspection, authorise the trustee to have an account with a local bank. (See under TRUSTEE IN BANKRUPTCY.)

In connection with the winding up of a company, a committee may be appointed to supervise the liquidation. It shall consist of creditors and contributories of the company 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 (Section 253 (1), of the Companies Act, 1948). Sub-sections (3) to (9), see above, are practically to the same effect as sub-sections (2) to (8) of Section 253 of the Companies Act. (See BANKRUPTCY, COMPANIES.)

COMMITTEE OF LONDON CLEARING BANKERS (20 King William Street, London, E.C.4). Membership consists of the chairmen of the eleven clearing banks. Meetings are held monthly, and a quarterly meeting is held at the Bank of England under the chairmanship of the Governor.

It deals with problems of common interest to its members and is the mouthpiece for any approach to the Treasury. It also circulates governmental announcements on banking matters to its members.

COMMITTEES. (See SOCIETIES.)

COMMON LAW. Before the reign of Henry II there was a variety of legal customs in different parts of the country, and there was no body of law common to the entire country. In the reign of Henry II, the King's judges went on circuit and in time wove all the conflicting customs into one common system which became known as Common Law.

The Law Merchant is that part of the Common Law dealing with the customs and practices of business and commerce. Common Law is sometimes contrasted with Statute Law, which is the written law as enacted by Parliament.

COMMON SEAL. (See SEAL.)

COMMON SEAL BOOK. A record of every document which is sealed with the common seal of a bank is preserved in this book. An exact description of each document is given, with the date of sealing and the names of the persons in whose presence the seal was affixed, and each entry should be initialed by one, at least, of such persons when the relative document has been sealed. Each entry may be numbered, and the number placed upon the relative document.

COMMON STOCK. An American term for what, in this country, is called ordinary stock.

COMPANIES. Before dealing with a joint stock company, a banker should make himself acquainted with its memorandum and articles of association. Every person who does business with a company is bound by the contents of those documents. When an account is opened by a company, it is advisable that the banker should be furnished with a copy of the memorandum and articles, so that he may ascertain exactly what regulations there are in connection with keeping a banking account, and with drawing, accepting and indorsing bills, and what powers of borrowing and of mortgaging the property of the company is given to the directors. The certificate of incorporation, and, where the company is not a private one, the registrar's certificate that the company is entitled to commence business, should be exhibited. A copy of the company's balance sheet should also be obtained. The directors of the company should pass a resolution respecting the opening of the account, and embody therein the regulations of the company with respect to the way in which cheques are to be drawn and indorsed, and bills drawn, accepted and indorsed. A copy of the resolution, signed by the chairman or the secretary, and a specimen of the signature of each person who has power to sign, should be furnished to the banker.

The resolution should be communicated to the bank in some such form as the following—

We hereby certify that the following resolution of the board of directors of the ..... Company, Limited, was passed at a meeting of the board held on the .... and has been duly recorded in the minute book of the company—

"*Resolved*—That a banking account for the company be opened with the ..... Bank, Limited, ..., and that the said bank be and is hereby authorised to honour cheques, bills, and promissory notes drawn, accepted, or made on behalf of the company by [here insert how many persons have to sign] and to act on any instructions so given

relating to the account or transactions of the company."

.....Chairman.
.....Secretary.

Where the secretary is also a director of the company and cheques are to be signed by, say, one director and countersigned by the secretary, the resolution should state whether or not the secretary may sign cheques in both capacities, as, in such cases, it is often the intention that the director's signature should be that of a director other than the secretary. It may be that the company's articles of association do not allow one person to act in the double capacity.

When an advance is required, a resolution should be passed by the directors of the company authorising the advance and the charge on the proposed security. A certified copy of the resolution is usually given to the banker.

Mortgages and charges as detailed in Section 95 of the Companies Act, 1948, require to be registered with the Registrar of Companies within twenty-one days from the date of their creation. (See REGISTRATION OF MORTGAGES AND CHARGES.) The registrar's certificate of registration should be deposited with the security. The banker can ascertain, by a search made at the office of the Registrar of Companies, what charges have already been registered and, by an inspection of the company's register of mortgages, if any recent charge has been created though not, so far, registered with the registrar.

In *Mahony* v. *East Holyford Mining Co., Ltd.* (1875), L.R. 7 H.L. 869, Lord Hatherley said that those who deal with joint stock companies must be affected with notice of all that is contained in the memorandum and articles of association. "A banker dealing with a company must be taken to be acquainted with the manner in which, under the articles of association, the moneys of the company may be drawn out of his bank for the purposes of the company. . . . The bankers must also be taken to have knowledge from the articles of the duties of the directors, and the mode in which the directors were to be appointed. But after that, where there are persons conducting the affairs of a company in a manner which appears to be perfectly consonant with the articles of association, then those so dealing with them externally are not to be affected by any irregularities which may take place in the internal management of the company."

In *Ruben & Ladenburg* v. *Great Fingall Consolidated* (1906), 22 T.L.R. 712, Lord Loreburn, in the House of Lords, said: "It is quite true that persons dealing with limited liability companies are not bound to inquire into their indoor management, and will not be affected by irregularities of which they had no notice. But this doctrine, which is well established, applies only to irregularities that otherwise might affect a genuine transaction. It cannot apply to a forgery."

In *Kreditbank Cassel* v. *Schenkers' Ltd.* (1927), 43 T.L.R. 237, C., a branch manager of the defendants, without any authority to do so from the defendants, drew bills on behalf of the company. The bills were discounted by the plaintiff bank, and when they were dishonoured by the acceptors, the plaintiff bank sued the defendants as drawers, but the latter repudiated the whole transaction. It was held (1) that, in the absence of evidence that the branch manager had ostensible authority to draw bills on behalf of the company, the plaintiffs were not entitled to assume that he had such authority (the decision in *Houghton & Co.* v. *Nothard, Lowe & Wills*, [1927] 1 K.B. 246, being followed); (2) that the bills were forgeries and therefore null and void, and the defendants were not precluded from setting up the forgery or the want of authority of the branch manager.

In *Victors, Ltd. (in liquidation)* v. *Lingard*, [1927] 1 Ch.D. 323, one of the articles of association of a company provided that no director should be disqualified from entering into contracts or dealings with the company, but that no director should vote as a director in regard to any contract or dealing in which he was interested. The directors personally guaranteed an overdraft to the company by a bank. As a result of negotiations with the bank they subsequently passed a resolution that, subject to the bank's approval, debentures be issued to the bank as security for the overdraft. The debentures were issued. Ultimately an action was brought by the company against the bank for a declaration that the debentures were invalid. Romer, J., held that the directors were "interested" in the arrangement come to with the bank in regard to the issue of the debentures, within the meaning of the company's articles, as the directors had joined in the guarantee, and the resolution was a nullity as the directors were not competent to vote upon it. The company was, however, by reason

of the course of events subsequent to the issue of the debentures, estopped from alleging the invalidity of the debentures and the action therefore failed.

In case of need, the memorandum and articles may be inspected by anyone at the office of the Registrar of Companies, on payment of a fee of one shilling.

If the company has issued debentures or debenture stock, it will be necessary to ascertain in what way they are secured, particularly if the title deeds of the company's property are offered as security, as the company may be restrained from creating any charge in priority to the debentures. (See REGISTRATION OF CHARGES.)

In the case of a new company, it should be noted that it is only from the date of incorporation, as shown in the certificate of incorporation, that the company is capable of exercising the functions of an incorporated company. Contracts entered into before incorporation are provisional only and will not bind the company until it is entitled to commence business. (See ARTICLES OF ASSOCIATION.) A company cannot exercise its borrowing powers until it is entitled to commence business. Before lending money to a public company a banker should therefore see the certificate of the registrar of companies stating that the company is entitled to commence business. A private company can commence business as soon as incorporated and the above certificate is not required. The regulations respecting the commencement of business by a public company and the exercise of its borrowing powers are set forth in Section 109 of the Companies Act, 1948, which is as follows—

"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 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 with in or 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 private company, or a company registered before the first day of January nineteen hundred and one, or 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."

The difference between a company and an ordinary partnership was defined by James, L.J., in *Smith* v. *Anderson* (1880), 15 Ch.D. 247, as follows: "An ordinary partnership is a partnership composed of definite individuals, bound together by contract between themselves to continue for some joint object, either during pleasure or during a limited time, but the partnership is essentially composed of the persons originally entering into the contract with one another. A company or association, which I take really to be synonymous terms, is an arrangement by which parties intend to have a partnership, which would be constantly changing; that is to say, to have what I may call a succession of partnerships, a partnership to-day consisting of certain members, but to-morrow consisting of some of those members only and some others who have come in. Hence there will be a constant shifting of the partnership, a determination of the old, and the creation of a new partnership, formed with a view and always formed with the intent, so far as the members can by agreement between themselves, of binding the next partnership to take upon itself the assets and debts of the old partnership. This object could not be effected in point of law by any arrangement between the persons themselves, unless the persons contracting with them by a novatio authorised the change; or, unless it was by special provisions in the Acts of Parliament which have given sanction to such arrangements, and to a certain extent, and under certain circumstances, have allowed that to be effected. That is the sole distinction between association and partnership."

In a partnership, each partner is responsible for the debts of the firm, and one partner cannot transfer his interest, or share, without the consent of the other partners.

As to a limited partnership, see LIMITED PARTNERSHIP.

In an incorporated company, the members form one body and creditors can proceed only against the company itself. In the most important kind of joint stock company—that is, the company limited by shares—each member is liable only to the extent of the nominal amount of the shares he holds. If the company is unlimited, each member is liable to the company or the liquidator for the debts.

By Section 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."

By Section 33—

"A bill of exchange or promissory note shall be deemed to have been made, accepted, or indorsed on behalf of a company if made, accepted, or indorsed in the name of, or by or on behalf or on account of, the company by any person acting under its authority."

In *Dey* v. *Pullinger Engineering Co., Ltd.* (1920), 37 T.L.R. 10, a bill was drawn on behalf of a company by the managing director, one director, and the secretary, and was accepted by the secretary, who

had, in fact, no authority to draw or accept bills. The bill came into the hands of a holder in due course, and was dishonoured. It was held that anyone looking at the articles of association could see that the managing director might have the power to draw and indorse this bill, and that the holder was entitled to assume that he had authority and was not bound to inquire into the internal management of the company or to prove an actual authority. The word "authority" in Section 33 (see above) includes express or implied authority.

See Section 108 under NAME OF COMPANY.

A company may seal a bill of exchange instead of signing it. (See Section 91, Bills of Exchange Act, 1882, under AGENT.) (See also the cases *Chapman* v. *Smethurst*, and *Landes* v. *Marcus & Davids* and *Stewart & Son, Ltd.* v. *Westminster Bank*, in the same article, and *Elliott* v. *Bax-Ironside* under INDORSEMENT.)

A deed may be executed by a company in the manner provided in the memorandum and articles of association, but the Law of Property Act, 1925, provides that, in favour of a purchaser (which includes a mortgagee), a deed shall be deemed to have been duly executed if its seal be affixed thereto in the presence of and attested by its secretary or other permanent officer or his deputy, and one of the directors, and, where a seal purporting to be the seal of the company has been affixed to a deed, attested by persons purporting to be persons holding such offices as aforesaid, the deed shall be deemed to have been executed in accordance with the requirements of this Section. (Section 74 (1).)

The board of directors may by resolution appoint an agent, either generally or in any particular case, to execute on behalf of the company any agreement or other instrument not under seal. (S.s. (2).) If a memorandum of deposit under hand is signed by an agent so appointed, a certified copy of the resolution should be obtained.

When cheques which are payable to a limited company are paid into the private account of a known agent of the company, the banker is put on inquiry (see *Hannan's Lake View Central, Ltd.* v. *Armstrong & Co.* under COLLECTING BANKER); and when cheques payable to one company are paid in to credit of another company, a banker should exercise care. (See the case of *London and Montrose Shipbuilding and Repairing Co. Ltd.* v. *Barclays Bank, Ltd.*, under COLLECTING BANKER.)

The different matters relating to companies are referred to under the following headings—

Agreement.
Allotment.
Annual Return.
Arrangement with Creditors.
Articles of Association.
Auditors.
Banking Company.
Blank Transfer.
Borrowing Powers.
Certificate.
Certificate of Incorporation.
Certificate of Registration.
Certificate to Commence Business.
Charitable Companies.
Committee of Inspection.
Company limited by Guarantee.
Company limited by Shares.
Company outside Great Britain.
Company unlimited.
Contracts.
Contributories.
Court, Powers of, in winding up.
Debenture.
Defunct Company.
Directors.
Dividend.
Dominion Register.
Exempt Private Company.
Fees payable to Registrar of Companies.
Floating Charge.
Forged Transfer.
Founders' Shares.
Guarantee.
Investigation of Company's Affairs.
Letter of Allotment.
Limited Partnership.
Liquidator.
Loan Capital.
Meetings.
Memorandum of Association.
Name of Company.
Official Receiver.
Official Seal for use Abroad.
Private Company.
Prospectus.
Proxy.
Public Company.
Quorum.
Receiver for Debenture Holders.
Reconstruction.
Reduction of Share Capital.
Register of Members of Company.
Register of Mortgages.
Registered Office.
Registrar of Companies.
Registration of Business Names.
Registration of Mortgages and Charges.

Reserved Liability.
Resolutions.
Scrip.
Seal.
Share Capital.
Share Warrant.
Stannaries.
Stock.
Subrogation.
Table A.
Transfer of Shares.
Transmission of Shares.
Underwriting.
Votes.
Wages Cheques.
Winding up.
Winding up Unregistered Companies.

COMPANIES ACT, 1947. This Act was the result of the report of the Cohen Committee (*q.v.*) of 1943. It amended and amplified the Act of 1929, and was itself repealed save for those sections dealing with matters not relating to companies, e.g. bankruptcy and registration of business names.

COMPANIES ACT, 1948. This Act came into operation on 1st July, 1948, and repealed the whole of the Companies Act, 1929, and the major part of the Companies Act, 1947. (See above.)

COMPANY LIMITED BY GUARANTEE WITH OR WITHOUT A SHARE CAPITAL. A company where the liability of its members is limited, by the memorandum of association, 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. Such companies are now only registered where they exist otherwise than for profit. They are usually formed for the purpose of clubs and societies which are not intended to make a profit.

The word "Limited" must be the last word in the name of the company. But see CHARITABLE COMPANIES.

Section 21 of the Companies Act, 1948, provides—

"(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."

By Section 6, in the case of a company limited by guarantee, articles of association must be registered with the memorandum. (See ARTICLES OF ASSOCIATION, COMPANIES, MEMORANDUM OF ASSOCIATION, NAME OF COMPANY.)

COMPANY LIMITED BY SHARES. A company where the liability of its members is limited by the memorandum of association to the amount, if any, unpaid on the shares respectively held by them.

The word "Limited" must be the last word in the name of the company. A contraction of the word should not be used officially.

In *Stacey & Co., Ltd.* v. *Wallis & Others* (1912), 28 T.L.R., where a bill was addressed to J. & T. H. Wallis (Ltd.), it was held that the name was correctly stated, as Ltd. was such a constant abbreviation that every commercial man of intelligence would know that "limited" was meant.

A limited company formed for promoting commerce, art, science, religion, charity or other useful object, where any profits or income are to be used in promoting its objects, may be licensed by the Board of Trade as a company with limited liability, without the addition of the word "Limited" to its name. (See CHARITABLE COMPANIES.)

Every limited company must have its name painted or affixed on the outside of every place where its business is carried on, and engraven on its seal, and mentioned in legible characters in all notices and official publications of the company, and in all bills of exchange, promissory notes, indorsements, cheques, invoices, receipts, etc. (See NAME OF COMPANY.)

By Section 439 of the Companies Act, 1948—

"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."

In a limited company the liability of directors or managers may, if so provided by the memorandum, be unlimited (Section 202).

A public company, registered after 31 Dec., 1900, must not exercise any borrowing powers until the Registrar has certified that the company is entitled to commence business (see Section 109, under COMPANIES); but a private company is entitled to commence business immediately on incorporation.

As a rule, the memorandum of association includes a power to borrow money and mortgage the landed property, but before making an advance the banker should examine that document and the articles of association, to ascertain exactly what the respective powers of the company and directors are. If no express power is taken in the memorandum of association, in the case of an ordinary trading company the power to borrow and mortgage for ordinary business purposes is implied. If the memorandum includes a power to borrow up to a certain fixed amount, the banker must be careful not to exceed that amount. For if a company borrows in excess of its powers, the security will not be binding on the company. The directors, however, may be held personally liable, and the money may, probably, be recovered in so far as it was used by the company to pay its debts. (See GUARANTEE, SUBROGATION.)

If a company has power to borrow, and the advance required will not exceed any fixed limit of borrowing that there may be, the banker will be safe in accepting the company's deeds with a memorandum signed by the directors. If the articles of association provide that certain regulations are to be observed by the directors when mortgaging the company's property, the banker may assume that all the regulations and formalities have been complied with; he is not expected, nor is he able, to examine into the "indoor working" of a company. (See REGISTRATION OF MORTGAGES and CHARGES.) The directors, however, may be expressly prohibited from mortgaging the property. (See ARTICLES OF ASSOCIATION, COMPANIES, MEMORANDUM OF ASSOCIATION.)

COMPANY NOT FOR PROFIT. (See CHARITABLE COMPANIES.)

COMPANY OUTSIDE GREAT BRITAIN. The Companies Act, 1948, makes special provisions with respect to companies incorporated outside Great Britain, but with a place of business established within Great Britain.

"Section 407. (1) Overseas 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;

"(*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."

Any process or notice required to be served on the company shall be sufficiently served if addressed to any person whose name has been delivered to the registrar. (Section 412.)

"Section 411. Every company to which this part of this Act applies shall—

"(1) in every prospectus inviting subscriptions for its shares or debentures in Great Britain state the country in which the company is incorporated; and

"(2) 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

"(3) 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, advertisements, and other official publications of the company."

See COMPANIES, REGISTRATION OF BUSINESS NAMES.

COMPANY, UNLIMITED. That is, a company not having any limit to the liability

of its members for the debts of the company. Very few companies are now registered with unlimited liability. Many banking and other companies which were originally unlimited have been re-registered as limited companies.

In the event of an unlimited company being wound up, though the liability of the members is unlimited the members are, as between themselves, only liable to contribute in proportion to their holdings. A past member is under no liability at all if he had ceased to be a member for a year before the winding-up. (See Section 212, under CONTRIBUTORIES.)

An unlimited company may register under the Companies Act, 1948, as limited, but such registration shall not affect any liabilities incurred before the registration. (Section 16.)

Section 64 of the above Act is as follows—

"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—

"(1) 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;

"(2) 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."

Section 431 specially provides that a bank of issue registered as a limited company shall not be entitled to limited liability in respect of its notes, and the members shall be liable as if it had been registered as unlimited. (See ARTICLES OF ASSOCIATION, BANKING COMPANY, COMPANIES, MEMORANDUM OF ASSOCIATION.)

COMPARATIVE BULLION CONTENT. The same as MINT PAR OF EXCHANGE (*q.v.*).

COMPENSATION AGREEMENT. (See EXCHANGE CLEARING AGREEMENT.)

COMPOSITION. Where an English bank authorised to issue its own notes, issued them under licence on unstamped paper, a composition, in lieu of stamp duty, of 3s. 6d. for each £100, or fraction thereof, of the notes in circulation, was payable half-yearly. The composition in Northern Ireland is also 3s. 6d. per £100; but in Scotland it is at the rate of 4s. 2d. for each £100.

By 9 Geo. IV, c. 23, Section 7, each half-year within fourteen days after the first day of January and the first day of July in every year, an account verified upon oath (before a justice of the peace or a commissioner to administer oaths in chancery) must be sent to the commissioners of the amount of all unstamped promissory notes and bills of exchange in circulation on each Saturday in the preceding half-year, together with the average amount of such notes and bills in circulation. The affidavit may be by a "cashier, accountant, or chief clerk," and the manager of a bank has been held to be a chief clerk within the meaning of the Act. The composition for stamp duty must be paid on the average amount as shown by that return. Bankers licensed to issue unstamped notes or bills must give security by bond for the due performance of the various conditions attaching to their issue. This Section applied to bankers in England. (See BANK NOTES.)

Except the Bank of England there is now no bank in England authorised to issue its own notes. (See BANK OF ISSUE.) Notes of the Bank of England are exempt from all liability to any stamp duty.

COMPOSITION WITH CREDITORS. Where a debtor is unable to pay his creditors he may, legally, call his creditors together and make an arrangement with them, by which he may obtain relief from his debts, and one of the usual methods by which this is done is to offer to pay a composition, that is, to pay so much in the pound in full discharge of the debts due to the creditors. The composition is usually payable in a number of instalments, upon specified dates, and is guaranteed by sureties. In some cases promissory notes are given for the various instalments, and are made payable at the various dates on which the instalments are due.

If the arrangement is agreed to by the creditors in a deed or instrument, called a deed of arrangement, it must be registered within seven days, otherwise it is void. (See DEED OF ARRANGEMENT.)

An arrangement of this kind between a debtor and his creditors is quite independent of proceedings under the Bankruptcy Acts, but, if he fails to pay the agreed instalments, the arrangement does not prevent proceedings in bankruptcy being subsequently taken. In *The Laws of England*, edited by the Right Hon. the Earl of Halsbury, the

following is given as the effect of a debtor failing to pay an instalment: "If the effect of the arrangement is that the creditors accept the payment of the composition in discharge of their debts, then usually a failure by the debtor to comply with his obligation will entitle the creditors to sue him for the whole of the balance of their debts. But if the effect of the arrangement is that the creditors accept the promise of the debtor with or without a surety in satisfaction of their debts, on default by the debtor the creditors can only sue for the balance of the amount of the composition." (See ACTS OF BANKRUPTCY, ASSIGNMENT FOR BENEFIT OF CREDITORS, BANKRUPTCY.)

COMPOSITIONS (BANKRUPTCY ACT). When a receiving order has been made against a debtor, he must, within a certain time, submit a statement of his affairs to the official receiver. (See RECEIVING ORDER.) If the debtor wishes to submit to his creditors a proposal for a composition—that is, a payment of so much in the pound—or for a scheme of arrangement, the Bankruptcy Act, 1914, provides as follows—

"Section 16. (1) Where a debtor intends to make a proposal for a composition in satisfaction of his debts, or a proposal for a scheme of arrangement of his affairs, he shall, within four days of submitting his statement of affairs, or within such time thereafter as the official receiver may fix, lodge with the official receiver a proposal in writing, signed by him, embodying the terms of the composition or scheme which he is desirous of submitting for the consideration of his creditors, and setting out particulars of any sureties or securities proposed.

"(2) In such case the official receiver shall hold a meeting of creditors, before the public examination of the debtor is concluded, and send to each creditor, before the meeting, a copy of the debtor's proposal with a report thereon; and if at that meeting a majority in number and three-fourths in value of all the creditors who have proved resolve to accept the proposal, it shall be deemed to be duly accepted by the creditors, and when approved by the court shall be binding on all the creditors."

The Court has power to approve or to refuse to approve the proposal (s.s. (11)).

If the debtor's proposal is accepted by the creditors, the receiving order is discharged by the Court. If a trustee is appointed to carry out the scheme, the official receiver hands the debtor's property to him, but if no trustee is appointed the official receiver acts as trustee.

If the proposal is not accepted within fourteen days after the conclusion of the debtor's examination, the Court shall adjudge the debtor bankrupt. (See ADJUDICATION OF BANKRUPTCY.)

A composition or scheme of arrangement may be accepted by the creditors, if they think fit, at any time after the debtor is adjudicated bankrupt, and the Court may annul the bankruptcy. (Section 21 (1) and (2).)

If default is made in payment of an instalment, the Court may adjudge the debtor bankrupt and annul the composition or scheme, but without prejudice to the validity of any sale, disposition, or payment duly made in pursuance of the composition or scheme. (Section 16 (16).)

Debts are proved in the same way as in the case of bankruptcy. (See BANKRUPTCY, PROOF OF DEBTS, SCHEME OF ARRANGEMENT.)

COMPOUND INTEREST. Compound interest is interest upon interest as it falls due. Upon current accounts a banker calculates the interest half-yearly and adds it to the principal, when it becomes part of the principal, and upon that amount interest is forthwith charged or allowed as the case may be. Strictly speaking, compound interest cannot be charged on a "stopped" account, such as the overdrawn account of a customer who has died.

Compound interest is only applicable to current or "running" accounts.

When a banker takes as security a mortgage for a fixed amount, simple interest only can be charged, unless there is an agreement otherwise, as the position in such a case is that of mortgagor and mortgagee. The taking of a mortgage, or transfer of mortgage, for a fixed amount terminates the ordinary relation of banker and customer. (See TRANSFER OF MORTGAGE.)

A ready way of ascertaining approximately the number of years in which a sum will double itself at compound interest, is to divide seventy by the rate per cent. (See INTEREST.)

COMPOUNDING A FELONY. If an official commits a felony, e.g. an embezzlement, and someone provides the bank with money or securities to cover the defalcations, in

order to prevent the institution of a prosecution, this is called compounding a felony.

In *Whitmore* v. *Fairley* (1880), 29 W.R. 825, Lush, L.J., in the course of his judgment, said: "It is as old as the law itself that compounding a felony is not merely an illegal, but a criminal act. It follows that every agreement by a prosecutor to forego a prosecution, in consideration of a benefit to himself, is an illegal agreement which the law will not sanction. A person who is robbed cannot be compelled to prosecute. No doubt it is his duty to society to do so, but it is an imperfect obligation. If, however, he does prosecute, he assumes the office of a public prosecutor, and prosecutes on behalf of the public. If he enters into a bargain not to prosecute, that is just as much void as if it was made after prosecution commenced. This is not confined to felony. The law is just the same with regard to cases of misdemeanour."

COMPOUNDING WITH CREDITORS. (See COMPOSITION WITH CREDITORS.)

COMPULSORY LIQUIDATION. (See WINDING UP BY THE COURT.)

CONDITIONAL ACCEPTANCE. (See ACCEPTANCE, QUALIFIED.)

CONDITIONAL INDORSEMENT. Where a condition is attached to an indorser's signature on a bill of exchange, the condition may be disregarded by the paying banker, and payment to the indorsee is valid whether the condition has been fulfilled or not. "As between indorser and indorsee the condition presumably would be operative; and if the indorsee received payment without the condition being fulfilled, he would hold the money in trust for the indorser" (Chalmers). An indorsement "Pay John Brown or order, on the arrival of the ship *Swallow* at Calcutta" would be conditional. (See INDORSEMENT.)

CONDITIONAL ORDERS. A bill of exchange is an unconditional order. An order upon a banker to pay a certain sum, provided that a form of receipt is signed, is not unconditional, and therefore does not comply with the definition of a cheque in the Bills of Exchange Act, 1882. See Section 3 under BILL OF EXCHANGE and Section 73 under CHEQUE.

Such documents are not protected by Section 60 (or 80) or Section 82 of the Bills of Exchange Act but by Section 17 of the Revenue Act, 1883, provided they are crossed and show no evidence of transfer. The Bills of Exchange (Crossed Cheques) Act of 1906 does not apply and, strictly speaking, they should not be credited as cash.

An unqualified order to pay, coupled with an indication of a particular account to be debited, is unconditional (Section 3 (3)).

(See RECEIPT ON CHEQUE for further information regarding conditions on cheques.)

CONFIDENTIAL INQUIRIES. (See BANKER'S OPINION.)

CONFIRMATION OF BALANCE. Some banks send out to each current account customer (or to a selected number), either yearly, or half-yearly, a form showing the balance of the customer's account, with a request that the form, if correct, be signed by the customer and returned to the bank. The balance on that form should be the same as the balance shown by the pass-book statement, and before a customer signs it he ought to scrutinise the entries in the pass-book statement to see that they are in agreement with his own records, and then compare the balance of the pass-book statement with that stated on the form.

In some of the banks in Scotland, confirmations are signed in the ledgers.

CONFIRMED CREDIT. The nature of a confirmed credit can best be illustrated by example. A Norwegian importer may arrange to buy goods from West Africa and undertakes to make payment by opening a sterling credit in London in favour of the exporter. The Norwegian will request his own banker to arrange with a London banker to establish the credit on the terms, say, of payment against delivery of documents by the African exporter. The latter may desire to be assured that payment will be made with absolute certainty, in which case the importer by paying a small extra commission can arrange for the London banker to give his confirmation to the exporter that payment will be forthcoming.

This will be a confirmed credit. A confirmed credit is not necessarily the same as an irrevocable credit, since it is possible for the latter to be unconfirmed, as when a banker in country A instructs another banker in country B to open a credit in favour of a merchant C, the credit to be irrevocable as regards the first banker but not confirmed by the second. (See DOCUMENTARY CREDIT.)

CONFLICT OF LAWS. Section 72 of the Bills of Exchange Act, 1882, sets forth the rules to be observed where there is a conflict of laws regarding bills of exchange. See that Section under FOREIGN BILL.

CONSEQUENTIAL LOSS INSURANCE. (See FIRE INSURANCE.)

CONSIDERATION. Valuable consideration has been defined as "some right, interest, profit, or benefit, accruing to one party, or some forbearance, detriment, loss, or responsibility given, suffered, or undertaken by the other."

A simple contract, that is a contract not under seal, in order to be enforceable at law, must be supported by a valuable consideration. In a contract under seal a valuable consideration is not essential. "Natural love and affection" is called a good consideration, but it is not sufficient to support a simple contract. A contract based upon an illegal consideration, that is one which is contrary to the law or is against public policy or morality, cannot be enforced. (See CONTRACTS.)

Upon a sale of property, the purchase price is the consideration, and that amount is inserted in the deed of conveyance and the stamp duty, *ad valorem*, calculated thereon.

In a deed of gift, as, for example, where a property is the subject of a gift from, say, a father to his son, the consideration may be "natural love and affection." With regard to the stamp duty on gifts *inter vivos*, the Finance (1909-10) Act, Section 74, enacts that any conveyance operating as a voluntary disposition *inter vivos* shall be chargeable with the same duty as if it were a conveyance on a sale, with the substitution of the value of the property conveyed for the amount of the consideration. (See CONVEYANCE.)

The consideration named in a transfer, upon a sale of stock or shares, may differ from the amount received by the original seller, owing to subsequent sales having taken place. The price paid by the last purchaser is the one inserted in the transfer, and on which stamp duty is paid. The difference is explained in a printed footnote on transfer forms, and this footnote justifies a transferor in executing a transfer where the consideration differs from the amount received by him.

In a transfer of shares to a bank or its nominees as security for a loan or advance, the consideration is usually a nominal one, say five or ten shillings; and the same nominal consideration is inserted in a transfer when the shares are being transferred as a gift. (See TRANSFER OF SHARES.)

Where shares are specifically left in a will, the consideration in a transfer from the executors to the legatee will be a nominal one; but where a legatee agrees to accept a transfer of certain shares, instead of receiving the cash to which he is entitled, the consideration must be the price agreed upon between the legatee and executors, and the stamp duty will be *ad valorem*.

All deeds prior to 1881 should have indorsed thereon a receipt for the consideration stated in the body of the deed. Since that date it is sufficient if the receipt is in the body of the deed. It must, however, be an actual receipt and not simply a statement that the money has been paid. (See NOMINAL CONSIDERATION.)

CONSIDERATION FOR BILL OF EXCHANGE. There must be a valuable consideration for a contract not under seal, though it is not necessary in a bill of exchange that the consideration be stated in writing.

The Bills of Exchange Act, 1882, Section 3 (4), enacts that a bill is not invalid by reason "that it does not specify the value given, or that any value has been given therefor."

The words "for value received" are very commonly used as the last words in the body of a bill of exchange, but a bill is quite valid without any such words.

The word "sterling" was at one time usually written after the amount, but it is now very rarely met with on inland bills.

By Section 27—

"(1) Valuable consideration for a bill may be constituted by—

"(*a*) Any consideration sufficient to support a simple contract;

"(*b*) An antecedent debt or liability. Such a debt or liability is deemed valuable consideration whether the bill is payable on demand or at a future time."

Where a person signs a bill as drawer, acceptor, or indorser, without receiving value therefor, he is an accommodation party. (See ACCOMMODATION BILL.)

A total failure of consideration is a defence between "immediate parties," but it is not a defence between remote parties, when the holder is a holder in due course. (See IMMEDIATE PARTIES.)

Where a cheque is given as a gift, the receiver cannot sue the giver thereon, because of the absence of consideration.

"Natural love and affection," though a good consideration in a contract under seal, is not sufficient to support a simple contract, as in a bill of exchange. The consideration

must have some actual value, though the extent of that value may, in reality, be very small.

Mr. Justice Lush said (in *Currie* v. *Misa* (1875), L.R. 10 Ex. 162): "A valuable consideration in the sense of the law, may consist either in some right, interest, profit, or benefit accruing to one party, or some forbearance, detriment, loss, or responsibility given, suffered, or undertaken by the other."

The title of a person who negotiates a bill is defective if he obtained the bill for an illegal consideration (Section 29 (2)).

Where a consideration is effected with fraud or illegality, that would form a good defence against an "immediate party" (see IMMEDIATE PARTIES), but not against a remote party who is a holder in due course, that is, one who took the bill for value, in good faith and without knowledge of any defect in the title. (See HOLDER IN DUE COURSE.)

A bill, or cheque, given for a wagering or gaming debt, cannot be sued upon by a holder who took it with knowledge of the illegal consideration, but a holder in due course, who took it without such knowledge, can sue upon it.

It has also been decided in *Moulis* v. *Owen*, [1907] 1 K.B. 746, that even when a cheque is drawn in a foreign country on a banker in this country, for a consideration which is legal in the country where it is drawn, but illegal in this country, the action on the cheque fails. This was a decision of the Court of Appeal, and Lord Justice Fletcher Moulton disagreed with the finding of the two other Lord Justices. (See BILL OF EXCHANGE.)

CONSOLIDATED FUND. The Consolidated Fund of the United Kingdom is the fund into which is paid the whole of the revenue, and out of which payments are made, as provided by Parliament. The account at the Bank of England is called the Exchequer Account.

CONSOLIDATED FUND ACT. An Act passed annually by Parliament to enable the Treasury to apply out of the Consolidated Fund a sum for the supply services of the ensuing financial year. This Act does not appropriate the sum to any particular services, but the Appropriation Act (*q.v.*) passed at the end of the session shows how all the grants made during the session are appropriated.

CONSOLIDATION. The combination of several issues of stocks and shares into one uniform security. (See CONSOLS.) See also CONSOLIDATION OF MORTGAGES.

CONSOLIDATION OF MORTGAGES. Where a person holds several mortgages on different properties, belonging to the same mortgagor, a right to consolidate the mortgages may be given to him by the mortgagor, and he can then refuse to allow one mortgage to be redeemed without the others being also redeemed.

The right to consolidate must be specially granted in one of the mortgage deeds. By Section 93 of the Law of Property Act, 1925—

"(1) A mortgagor seeking to redeem any one mortgage is entitled to do so, without paying any money due under any separate mortgage made by him, or by any person through whom he claims, solely on property other than that comprised in the mortgage which he seeks to redeem.

"This subsection applies only if and as far as a contrary intention is not expressed in the mortgage deeds or one of them." (See MORTGAGE.)

A banker's mortgage usually contains a clause that the mortgagor shall not be entitled to redeem one mortgage without at the same time redeeming every other mortgage he has given to the bank. (See BANKER'S MORTGAGE.)

CONSOLS. A contraction of "consolidated funds" and "consolidated annuities."

The Government borrowed money at different times and set aside a portion of the revenue to pay the interest or annuity upon each separate loan. The various loans were, in 1751, made uniform and consolidated into one fund, called the Three per cent Consolidated Annuities, or "3 per cent Consols." In 1888 the rate became 2¾ per cent, and in 1903 2½ per cent. Consols are redeemable at par in, or after, 1923 at the option of the Government.

The interest is due on 5th January, 5th April, 5th July, 5th October. Consols are marked ex dividend about four weeks before the interest is due. The Bank does not deduct income tax from interest on Consols when the interest does not exceed £5 per annum.

Consols were originally in inscribed form, but some fifty years ago were permitted to be held in bearer form. By the Finance Act, 1911, they could be registered as transferable by deed.

During 1940, holders of bearer Consols were encouraged to convert them into registered or inscribed stock for safety purposes.

As from 1st January, 1943, inscribed stock for British Government securities, including Consols, was abolished.

CONSTAT. The name given to an exemplification under the Great Seal of any letters patent made by His Majesty. (See EXEMPLIFICATION.)

CONSULAR INVOICE. An invoice, on an official form, used in export trade with certain countries such as the United States and the South American Republics, which is required at the port of entry in connection with import duties. The exporter signs a declaration before the local consul for the country to which the goods are to be exported, stating that the particulars given in the invoice are correct. He also declares where the goods were manufactured, that no different invoice thereof has been or will be furnished to anyone, and that the amount in the invoice is that which was actually paid or is to be paid for the goods. The document is then certified by the consul.

CONTANGO. The charge made by a stockbroker for carrying over or continuing a bargain from one Stock Exchange settlement until another. The charge was based on money market rates, and was fixed on "contango day"—the first of the Stock Exchange settling days—also known as "carry over" day, "making-up" day, or "continuation" day.

The contango system was abolished on the outbreak of war in 1939 and was not restored when the Council of the Stock Exchange re-instituted the system of fortnightly settlements on 10th January, 1947.

Contango facilities were restored, however, in May, 1949. As from the end of May settlement, buyers and sellers of shares, including members of the public, were able to carry over their bargains at rates of interest charged or offered by the market. It would appear that the Council of the Stock Exchange was influenced in its decision to restore the contango system by the technical assistance it would give to the jobbing system.

CONTINGENT ACCOUNT. An account to which amounts may be placed to provide for uncertain and unforeseen liabilities.

CONTINGENT LIABILITY. A liability which is uncertain. For example, if Brown has given a guarantee on behalf of Jones, it forms a contingent liability; if Jones fails, the guarantee will become an actual liability and must be met by Brown. It is necessary, in the event of Brown furnishing his banker with a copy of his balance sheet, that the banker be advised of the existence of the guarantee or of any other liability dependent upon a contingency.

With regard to the contingent liability on bills discounted, see DISCOUNTING A BILL.

CONTINGENT REMAINDER. (See REMAINDER.)

CONTINUATION DAY. The first of the five days of a Stock Exchange settlement. Also called "Contango Day" (*q.v.*). (See STOCK EXCHANGE.)

CONTINUING SECURITY. A security for a current account should be a continuing security, that is, it should continue to secure the account for which it has been given, although the balance of the account may fluctuate from time to time. In a guarantee it is expressly provided that it "shall be a continuing security." (See GUARANTEE.) A banker's mortgage and a memorandum of deposit are also drawn so as to form continuing securities. (See BANKER'S MORTGAGE, LEGAL MORTGAGE, MEMORANDUM OF DEPOSIT.) When a company deposits any of its debentures to secure a current account, it is specially provided by the Companies Act, 1948, that the debentures shall not be deemed to have been redeemed by reason only of the account having ceased to be in debit. (See DEBENTURES.)

A mortgage to secure a fixed amount is not a continuing security for a current account. Against such a security the advance should be on a separate loan account. (See MORTGAGE.)

With respect to the right of a prior mortgagee to make further advances, after receiving notice of a subsequent mortgage, where the mortgage imposes an obligation on the mortgagee to make further advances, see the provisions of the Law of Property Act, 1925, Section 94, under MORTGAGE.

CONTRACT. (See CONTRACTS.)

CONTRACT NOTE (BROKER'S). The note or memorandum which is given by a broker to the person for whom an order to buy or sell certain stocks or shares has been carried out, and which gives particulars of the transaction.

Where a purchase or sale is made by order of a banker on behalf of a customer, a note is made on the contract note that the commission is shared with the banker. The Stock Exchange Committee requires that, in addition to a note on the contract note that the commission has been divided with an agent, the name of the agent must be given. This is done in view of the Prevention of Corruption Act, 1906 (*q.v.*).

The following is a specimen of a contract note—

Exchange Buildings,
York.

, 19 .

Bought for
(Subject to the Rules and Regulations of the London Stock Exchange.)

@

Transfer Stamp and
Registration .
Contract Stamp .
Brokerage . .

£

For Settlement

, Brokers.

As to the London Stock Exchange scale of Commissions, see under STOCKBROKER.

The Finance (1909–10) Act, 1910, as amended by Finance Act, 1947, Section 52, enacts as follows—

"Section 77. (1) There shall be charged on every contract note as defined by this Section for or relating to the sale or purchase of any stock or marketable security the following stamp duties—

Where the value of the stock or marketable security—

			£	s.	d.
is	£5 and does not exceed	£100	0	1	0
exceeds	£100	£500	0	2	0
,,	£500	£1,000	0	4	0
,,	£1,000	£1,500	0	6	0
,,	£1,500	£2,500	0	8	0
,,	£2,500	£5,000	0	12	0
,,	£5,000	£7,500	0	16	0
,,	£7,500	£10,000	1	0	0
,,	£10,000	£12,500	1	4	0
,,	£12,500	£15,000	1	8	0
,,	£15,000	£17,500	1	12	0
,,	£17,500	£20,000	1	16	0
,,	£20,000		2	0	0

"(2) Where a contract note is a continuation or carrying over note made for the purpose of continuing or carrying over any transaction for the sale or purchase of stock or marketable securities, the contract note, although it is made in respect of both a sale and purchase, shall be charged with duty under this Section as if it related to one of those transactions only, and, if different rates of duty are chargeable in respect of those transactions, to that one of those transactions which would render the contract note chargeable at the highest rate.

"(3) For the purposes of this Part of this Act, the expression "contract note" means the note sent by a broker or agent to his principal, or by any person who by way of business deals, or holds himself out as dealing, as a principal in any stock or marketable securities, advising the principal, or the vendor or purchaser, as the case may be, of the sale or purchase of any stock or marketable security, but does not include a note sent by a broker or agent to his principal where the principal is himself acting as broker or agent for a principal, and is himself either a member of a stock exchange in the United Kingdom, or a person who *bona fide* carries on the business of a stockbroker in the United Kingdom, and is registered as such in the list of stockbrokers kept by the Commissioners.

"(4) Where a contract note advises the sale or purchase of more than one description of stock or marketable security, the note shall be deemed to be as many contract notes as there are descriptions of stocks or securities sold or purchased.

Obligation to Execute Contract Note.

"78. (1) Any person who effects any sale or purchase of any stock or marketable security of the value of five pounds or upwards as a broker or agent, and any person who by way of business deals, or holds himself out as dealing, as a principal in any stock or marketable security, and buys or sells any such stock or marketable security of a value of five pounds or upwards, shall forthwith make and execute a contract note, and transmit the note to his principal, or to the vendor or purchaser of the stock or marketable security, as the case may be, and in default of so doing shall incur a fine of twenty pounds: Provided that this Section shall not apply in the case of transactions carried out in the course of their ordinary business relations between members of stock exchanges in the United Kingdom.

"(2) If any person makes or executes any contract note chargeable with duty and not being duly stamped,

he shall incur a fine of twenty pounds.

"(3) No broker, agent, or other person shall have any legal claim to any charge for brokerage, commission, or agency, with reference to the sale or purchase of any stock or marketable security of the value of five pounds or upwards, if he fails to comply with the provisions of this Section.

"(4) All stamp duties on a contract note are to be denoted by an adhesive stamp appropriated to a contract note, and the stamp is to be effectively cancelled by the person by whom the note is executed by writing on or across the stamp his name or initials, or the name or initials of his firm, together with the true date of his so writing.

"(5) Any stamp duty on a contract note may be added to the charge for brokerage or agency, and shall be recoverable as part of such charge.

Extension of Provisions as to Contract Notes to Sale or Purchase of Options.

"79. (1) The provisions of this Part of this Act as to contract notes shall apply to any contract under which an option is given or taken to purchase or sell any stock or marketable security at a future time at a certain price, as it applies to the sale or purchase of any stock or marketable security, but the stamp duty on such a contract shall be one-half only of that chargeable on a contract note: Provided that if under the contract a double option is given or taken the contract shall be deemed to be a separate contract in respect of each option.

"(2) Any contract note made or executed in pursuance and in consequence of the exercise of an option given or taken under a contract duly stamped in accordance with the provisions of this Section shall be charged with one-half only of the duty which would otherwise have been chargeable thereon under this Part of this Act, provided that it bears on its face a certificate by the broker, agent, or other person mentioned in the last preceding Section to the effect that it is made or executed in the exercise of an option for which a duly stamped contract has been rendered on the date mentioned in the certificate."

CONTRACTS. A contract is a formal agreement between two parties, it being understood by both that if the contract is broken it may become the subject of an action at law. A contract has been more fully defined as "an agreement entered into between two or more persons sanctioned by the law, by which agreement each undertakes to do, or to abstain from doing, a specified act or acts, in consideration of the other or others doing, or abstaining from doing, some other act or acts."

A contract may be made in a document under seal, as in a conveyance of property or transfer of shares; or it may be a simple contract made either by word of mouth or by a writing not under seal, as in a bill of exchange. In a contract under seal, there is no necessity to prove consideration. In a simple contract there must be a consideration of value. A valuable consideration has been defined as "some right, interest, profit, or benefit accruing to one party, or some forbearance, detriment, loss, or responsibility given, suffered, or undertaken by the other." A past benefit is not a consideration sufficient to support a simple contract. When a guarantee is taken by a banker to secure an existing overdraft, the consideration is usually expressed as the banker's forbearance not to press for repayment of the money or as the granting of further time to the debtor, or as opening or continuing an account with the principal debtor.

"A bargain without a consideration" (called a *nudum pactum*) is not a contract.

By the Bills of Exchange Act, 1882, a bill of exchange (*q.v.*), a cheque (*q.v.*), and a promissory note (*q.v.*), must be in writing. By the Statute of Frauds, a guarantee (*q.v.*) must be in writing. There are also other contracts which must be in writing.

In the case of a bill of exchange it is not necessary to specify in writing the value given or that any value has been given. There must, however, be a valuable consideration, which may be any consideration sufficient to support a simple contract. An antecedent debt or liability is deemed a valuable consideration in a bill of exchange, whether the bill is payable on demand or at a future time. (See CONSIDERATION FOR BILL OF EXCHANGE.)

A contract with a minor, with respect to any loan to him, is void. A contract is also

void if it is forbidden by an Act of Parliament; for example, when shares of a bank are sold, the contract note ought to specify the numbers of the shares, and if it does not do so, the contract is, legally, void. (See LEEMAN'S ACT.)

A contract under seal is a specialty contract, and an action must be brought within twelve years from the date when the cause of action first arose. In a simple contract, the action must be brought within six years. (See LIMITATION ACT, 1939.)

Section 32 of the Companies Act, 1948, enacts that—

"(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 in 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 and the secretary of the company, and such subscription on behalf of the company shall be binding whether attested by witnesses or not."

A contract of suretyship may, under certain circumstances, be unenforceable. (See GUARANTEE.)

As to stamp duty see AGREEMENT. (See COMPANIES, OPEN CONTRACT.)

CONTRIBUTORIES. In the event of a joint stock company being wound up, the persons who are liable to contribute to the liabilities are called the contributories. Section 212 of the Companies Act, 1948, deals with the liability of present and past members, and is as follows—

"(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 Sub-section (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."

CONVERSION. Conversion is a legal term signifying wrongful interference with another person's property, inconsistent with the owner's right of possession. It has been defined as follows: "Any person who, however innocently, obtains possession of goods the property of another who has been fraudulently deprived of the possession of them and disposes of them whether for his own benefit or that of another person, is guilty of a conversion." A banker will be liable for conversion if he delivers to an unauthorised person articles left with him by a customer for safe custody. When he collects a cheque for a party who has no title or a defective title to it, he is guilty of conversion; whether he incurs liability to the true owner for such conversion depends on whether he is entitled to the protection of Section 82 of the Bills of Exchange Act, 1882.

The damages for conversion of a negotiable instrument are its face value, but in *Souchette, Ltd.* v. *London County Westminster & Parr's Bank, Ltd.* (1920), 36 T.L.R. 195, an action by the plaintiff company to recover damages for the conversion of certain cheques or alternatively for money had and received against the defendant bank, Mr. Justice Greer, in the course of his judgment, said that "it has been frequently laid down as a general rule that the measure of damages

is the value of the thing converted at the time of its conversion." "There are many cases in which the circumstances have been taken into account in order to reduce the damages below what they would *prima facie* be."

In this case a director of the plaintiff company paid into his own account cheques drawn by the company in favour of a certain payee, whose signature he forged. That director then paid a smaller amount by his own cheque to the payee. The bank was allowed the benefit of these sums which the payee had received, and the damages for the conversion of the cheques referred to was held to be the ultimate loss which the plaintiffs suffered. (See this case also under ALTERATIONS, COLLECTING BANKER.)

In *A. L. Underwood, Ltd.* v. *Bank of Liverpool and Martins, Ltd.*; *A. L. Underwood, Ltd.* v. *Barclays Bank, Ltd.*, [1924] 1 K.B. 775, the bank was held to have been negligent and to be liable for conversion, in receiving for collection on behalf of the sole director of the company, for his own personal account, cheques payable to the company, without making any inquiry. (See under COLLECTING BANKER.)

See the case of *A. Stewart & Son of Dundee, Ltd.* v. *Westminster Bank*, under AGENT.

CONVERTIBLE PAPER CURRENCY. A bank note which can be exchanged for gold on demand for its full value, at the bank which issued it, is convertible paper, but if it cannot be so exchanged it is called inconvertible paper.

CONVERTIBLE SECURITIES. A general term applied to all securities which may be readily converted, or turned, into cash.

A security is sometimes described as "convertible," e.g. the Atchison, Topeka and Santa Fé 4 per cent Convertible bonds. These bonds may be converted into the common stock of that railroad company at any time that a holder of the bonds may desire.

CONVEYANCE. The word "conveyance" is principally used to denote the deed by which freehold property is conveyed to a purchaser in fee simple. The wording of a conveyance varies according to circumstances. An ordinary simple conveyance begins with the date and the names of the parties (e.g. vendor and purchaser) to the deed, after which follow the recitals, each clause beginning with the word "whereas" (the recitals explain the title and the object of the present deed). After the words "Now this Deed Witnesseth" (the testatum clause) follow the consideration (i.e. the sum to be paid for the property) and an acknowledgment for that sum by the vendor. After that (by the operative words) the vendor conveys the property to the purchaser, the exact particulars of the property being detailed, and then follows the habendum clause stating how the property is to be held (as, in fee simple, etc.). The clauses which follow contain any covenants there may be respecting the property. The conveyance is executed by the vendor, but execution by the purchaser is unnecessary, unless the instrument contains covenants binding on him.

In the Law of Property Act, 1925,

> "'Conveyance' includes a mortgage, charge, lease, assent, vesting declaration, vesting instrument, disclaimer, release and every other assurance of property or of an interest therein by any instrument, except a will." (Section 205 (1).)

By Section 52, "All conveyances of land or of any interest therein are void for the purpose of conveying or creating a legal estate unless made by deed." This Section does not apply to—

(*a*) Assents by a personal representative. (See PERSONAL REPRESENTATIVES.)

(*b*) Disclaimers under Section 54 of the Bankruptcy Act, 1914, (See DISCLAIMER.)

Indenture.

Instead of starting a conveyance with the words "This Indenture," it may be started with the words "This Conveyance" or "This Deed." (See DEED, INDENTURE.)

Abolition of Technicalities.

A conveyance of freehold land without words of limitation shall pass the fee simple or other the whole interest which the grantor had power to convey, unless a contrary intention appears in the conveyance. (Section 60 (1).) Thus the words "heirs" or "in fee simple" need not be used. (See FEE SIMPLE.)

In the same way, a conveyance to a corporation sole by its corporate designation without the word "successors" shall pass the fee simple to the corporation. (S.s. (2).)

Unless a contrary intention is expressed in a conveyance the whole estate and interest passes. (Section 63.)

Receipt in Deed.

A receipt for consideration money in the body of a deed shall be a sufficient discharge to the person paying without any further

receipt being indorsed on the deed. (Section 67.)

Execution of Deeds.

Where an individual executes a deed, he shall either sign or place his mark upon it. Sealing alone shall not be sufficient. (Section 73.)

Instruments Transferring Land.

From 1st September, 1931, an instrument transferring land must bear a stamp denoting that it has been produced to the Commissioners of Inland Revenue. See Section 28, Finance Act, 1931, under TITLE DEEDS.

By Section 62, Stamp Act, 1891—

CONVEYANCE or TRANSFER on sale (as in Schedule of Stamp Act, 1891), as amended by Finance Act, 1947.

Of any property (other than stocks or marketable securities)—

Where the value of the consideration for sale (or, in case of voluntary disposition, of property transferred)	£	s.	d.
Does not exceed £25—			
for every £5 and fraction of £5 .			6
Exceeds £25 but does not exceed £300—			
for every £25 and fraction of £25 .		2	6
Exceeds £300 but does not exceed £500—			
for every £50 and fraction of £50 .		5	0
Exceeds £500 but does not exceed £3,000—			
for every £50 and fraction of £50 .		10	0
Exceeds £3,000 but does not exceed £3,450—			
for every £50 and fraction of £50 of the total amount . .		15	0
Exceeds £3,450—			
for every £50 and fraction of £50 of the total amount . .	1	0	0

By Section 42, Finance Act, 1920, where stock is transferred on sale to a dealer or his nominee, and the transfer bears, in addition to the stamp denoting the duty, a supplementary impressed stamp denoting that it has been stamped under the provisions of this Section, the maximum duty shall be ten shillings. If any part of the stock has not, within two months, been transferred by the dealer to a *bona fide* purchaser, the dealer shall pay to the Commissioners of Inland Revenue a sum equal to the difference of the duty charged on the transfer and the amount of the *ad valorem* duty which would have been chargeable thereon if the stock comprised therein had been the stock which was not so transferred as aforesaid.

Section 73 of the Finance (1909–10) Act, 1910, is as follows—

"The stamp duties chargeable under the heading 'CONVEYANCE or TRANSFER on Sale of any Property' in the First Schedule to the Stamp Act, 1891 (in this Part of this Act referred to as the principal Act) shall be double those specified in that Schedule: Provided that this Section shall not apply to *the conveyance or transfer of any stock or marketable security as defined by Section one hundred and twenty-two of that Act, or to* [the words in italics were repealed by the Finance Act, 1920] a conveyance or transfer where the amount or value of the consideration for the sale does not exceed five hundred pounds and the instrument contains a statement certifying that the transaction thereby effected does not form part of a larger transaction or of a series of transactions in respect of which the amount or value, or the aggregate amount or value, of the consideration exceeds five hundred pounds." [A "marketable security" as defined by Section 122 of the Stamp Act, 1891, means a security of such a description as to be capable of being sold in any stock market in the United Kingdom.]

Since the passing of the above Act, conveyances, where the consideration does not exceed £500, contain a clause at the end to the above effect. (See FREEHOLD.)

Stamp Duty on Gifts inter vivos.

By the Finance (1909–10) Act, 1910, Section 74—

"(1) Any conveyance or transfer operating as a voluntary disposition *inter vivos* shall be chargeable with the like stamp duty as if it were a conveyance or transfer on sale, with the substitution in each case of the value of the property conveyed or transferred for the amount or value of the consideration for the sale:

Provided that this Section shall not apply to a conveyance or transfer operating as a voluntary disposition of property to a body of persons incorporated by a special Act if that body is by its Act precluded from dividing any profit among its members and the property conveyed is to be held for the purposes of an open space or for the purposes of its preservation for the benefit of the nation."

No conveyance or transfer operating as a voluntary disposition *inter vivos* shall be deemed to be duly stamped, unless the Commissioners have expressed their opinion thereon in accordance with Section 12 of the Stamp Act, 1891, but see the circular issued by the Board of Inland Revenue in February, 1911, under TRANSFER OF SHARES. (See ADJUDICATION STAMPS.)

Sub-sections (4), (5), and (6) of Section 74, Finance (1909–10) Act, enact as follows—

"(4) Where any instrument is chargeable with duty both as a conveyance or transfer under this Section and as a settlement under the heading 'SETTLEMENT' in the First Schedule to the principal Act, the instrument shall be charged with duty as a conveyance or transfer under this Section, but not as a settlement under the principal Act.

"(5) Any conveyance or transfer (not being a disposition made in favour of a purchaser or incumbrancer or other person in good faith and for valuable consideration) shall, for the purposes of this Section, be deemed to be a conveyance or transfer operating as a voluntary disposition *inter vivos*, and (except where marriage is the consideration) the consideration for any conveyance or transfer shall not for this purpose be deemed to be valuable consideration where the Commissioners are of opinion that by reason of the inadequacy of the sum paid as consideration or other circumstances the conveyance or transfer confers a substantial benefit on the person to whom the property is conveyed or transferred.

"(6) A conveyance or transfer made for nominal consideration for the purpose of securing the repayment of an advance or loan or made for effectuating the appointment of a new trustee or the retirement of a trustee, whether the trust is expressed or implied, or under which no beneficial interest passes in the property conveyed or transferred, or made to a beneficiary by a trustee or other person in a fiduciary capacity under any trust, whether expressed or implied, or a disentailing assurance not limiting any new estate other than an estate in fee simple in the person disentailing the property, shall not be charged with duty under this Section, and this sub-section shall have effect notwithstanding that the circumstances exempting the conveyance or transfer from charge under this Section are not set forth in the conveyance or transfer."

The following are the Sections of the Stamp Act, 1891, referred to above—

Meaning of "Conveyance on Sale."

"54. For the purposes of this Act the expression 'conveyance on sale' includes every instrument, and every decree or order of any court or of any commissioners, whereby any property, or any estate or interest in any property, upon the sale thereof is transferred to or vested in a purchaser, or any other person on his behalf or by his direction.

How ad valorem *Duty to be calculated in respect of Stock and Securities.*

"55. (1) Where the consideration, or any part of the consideration, for a conveyance on sale consists of any stock or marketable security, the conveyance is to be charged with *ad valorem* duty in respect of the value of the stock or security.

"(2) Where the consideration, or any part of the consideration, for a conveyance on sale consists of any security not being a marketable security, the conveyance is to be charged with *ad valorem* duty in respect of the amount due on the day of the date thereof for principal and interest upon the security.

How Conveyance in Consideration of a Debt, etc., to be Charged.

"57. Where any property is conveyed to any person in consideration, wholly or in part, of any debt due to him, or subject either certainly or contingently to the payment or transfer of any money or stock, whether being or constituting a charge or incumbrance upon the property or not, the debt, money, or stock is to be deemed the whole or part, as the case may be, of the consideration in respect whereof the conveyance is chargeable with *ad valorem* duty.

Direction as to Duty in Certain Cases.

"58. (3) Where there are several instruments of conveyance for completing the purchaser's title to property sold, the principal instrument of conveyance only is to be charged

with *ad valorem* duty, and the other instruments are to be respectively charged with such other duty as they may be liable to, but the last-mentioned duty shall not exceed the *ad valorem* duty payable in respect of the principal instrument.

"(4) Where a person having contracted for the purchase of any property, but not having obtained a conveyance thereof, contracts to sell the same to any other person, and the property is in consequence conveyed immediately to the sub-purchaser, the conveyance is to be charged with *ad valorem* duty in respect of the consideration moving from the sub-purchaser.

Principal Instrument, How to be Ascertained.

"61. (1) In the cases hereinafter specified the principal instrument is to be ascertained in the following manner:

"(*a*) Where any copyhold or customary estate is conveyed by a deed, no surrender being necessary, the deed is to be deemed the principal instrument:

"(*b*) In other cases of copyhold or customary estates, the surrender or grant, if made out of court, or the memorandum thereof, and the copy of court roll of the surrender or grant, if made in court, is to be deemed the principal instrument:

"(*c*) Where in Scotland there is a disposition or assignation executed by the seller, and any other instrument is executed for completing the title, the disposition or assignation is to be deemed the principal instrument.

"(2) In any other case the parties may determine for themselves which of several instruments is to be deemed the principal instrument, and may pay the *ad valorem* duty thereon accordingly."

CONVEYANCE or TRANSFER by way of security of any property (*except such stock as aforesaid*), or of any security.

See MORTGAGE, and MARKETABLE SECURITY.

	£	s.	d.
CONVEYANCE or TRANSFER of any kind not hereinbefore described	0	10	0

And see Section 62, above.

By Section 6, Finance Act, 1898—

"The definition 'Conveyance on Sale' includes a decree or order for, or having the effect of an order for, foreclosure. Provided that (*a*) the *ad valorem* stamp duty upon any such decree or order shall not exceed the duty on a sum equal to the value of the property to which the decree or order relates, and where the decree or order states that value that statement shall be conclusive for the purpose of determining the amount of the duty; and (*b*) where *ad valorem* stamp duty is paid upon such decree or order, any conveyance following upon such decree or order shall be exempt from the *ad valorem* stamp duty."

By Section 10, Finance Act, 1900—

"A Conveyance on Sale made for any consideration in respect whereof it is chargeable with *ad valorem* duty, and in further consideration of a covenant by the purchaser to make, or of his having previously made, any substantial improvement of or addition to the property conveyed to him, or of any covenant relating to the subject matter of the conveyance, is not chargeable, and shall be deemed not to have been chargeable with any duty in respect of such further consideration."

Where property is conveyed, subject to a mortgage, conveyance duty is payable upon the amount of the mortgage and interest up to the date of the conveyance (see Section 57 of the Stamp Act, 1891, quoted above), in addition to the duty upon the amount of the consideration passing from the purchaser. Where the mortgagee joins with the mortgagor in a conveyance to a purchaser, and the conveyance contains a covenant by the purchaser with the mortgagee for payment of the mortgage debt and interest, collateral security duty limited to 10s. (see MORTGAGE) is charged in addition with respect to that covenant.

As to stamping instruments after execution, see Section 15 of the Stamp Act, 1891, under heading STAMP DUTIES. (See COMPOSITION—TRANSFERS—SHARES, COPYHOLD, FREEHOLD, INCREMENT VALUE DUTY, LEASEHOLD, TRANSFER OF SHARES, TRANSMISSION OF SHARES.)

COPARCENERS. Before 1926, where the owner of a freehold estate died intestate without a male heir, the land descended to all the daughters (if any) as coparceners,

and the land could be partitioned amongst them. This method of inheritance was abolished by the Law of Property Act, 1925. (See INTESTACY.)

COPPER COINS. Real copper coins were first issued in 1672, and were replaced by bronze in 1860, though bronze coins are still commonly spoken of as "coppers." They are made of a mixed metal, 95 parts of copper, four parts of tin and one part of zinc. They are legal tender only to the amount of one shilling.

The figure of Britannia upon the coins is said to have been originally modelled from the beautiful Frances Stuart, afterwards Duchess of Richmond (Hutchison, *Practice of Banking*, Vol. II, p. 514.) (See COINAGE.)

COPYHOLD. In copyhold tenure, the freehold interest in land belonged to the lord of the manor, the copyhold tenant having practically an estate in fee simple, however, subject to certain customary rights and services due to the lord of the manor, such as "fines" on admittance of a new tenant, quit rents payable annually, and the right of "heriot," i.e. the right of the lord of the manor to take the best beast or chattel on the death of the copyholder.

By the Law of Property Act, 1922, all copyholds were converted into freeholds on 1st January, 1926, and all manorial incidents, services, and rights were abolished subject to compensation payable to the lord and steward of the manor.

The right of the lord to manorial incidents was kept alive until the end of 1936, unless compensation had been agreed upon voluntarily meanwhile, after which time they were no longer payable. But the right to compensation persisted until 1st January, 1941. Until that time either the lord or the tenant could apply to the Ministry of Agriculture to determine the amount of compensation, which was determined in accordance with the Copyhold Act, 1894, as modified by the Law of Property Act, 1922. If no application was made by 1st January, 1941, no compensation was payable for extinguished manorial incidents.

CORPORATION. A corporation is created by an Act of Parliament or by a charter granted by the Crown. A corporation is a legal "person" by itself and continues as a distinct body, irrespective of any changes which may take place amongst the members. Water companies are incorporated under private Acts of Parliament, and most trading companies under one of the Companies Acts. In considering an application for a loan, the banker must ascertain if the corporation has power to borrow, and, if it has power, whether the money to be borrowed will cause the limit of such borrowing powers to be exceeded.

In all dealings with a limited company, whether with regard to the borrowing of money, or the charging of the company's property, or the manner in which cheques are drawn, a banker is taken to be acquainted with the memorandum and articles of association of the company, and is affected with notice of all that is contained in those two documents. (See COMPANIES.)

CORPOREAL HEREDITAMENT. An interest in land in possession, i.e. a present right to enjoy the possession of land.

COULISSE. The official brokers, *agents de change*, upon the Paris Exchange, form the Parquet; the unofficial dealers form the Coulisse.

COUNTERFEIT COINS. (See BASE COINS.)

COUNTERMAND OF PAYMENT. A banker is obliged to honour the cheque of his customer, if there is a sufficient balance in the account to meet it, and the cheque is in order. The drawer may, however, instruct the banker to stop payment of a cheque, and the banker will be liable if he neglects to attend to the instructions.

The Bills of Exchange Act, 1882, Section 75, states that the duty and authority of a banker to pay a cheque drawn on him by his customer are determined by countermand of payment.

A countermand of payment can be given only by the drawer, but notice from a holder that a cheque has been lost by him would put a banker on his guard, pending instructions from the drawer.

Any cheque drawn upon a joint account may be stopped by any one of the joint parties, and one trustee or executor may stop payment of a cheque drawn by all the trustees or executors.

An order to stop payment of a cheque should be in writing and be signed by the customer, and if the order is subsequently cancelled, the fresh instructions should also be in writing. The drawer cannot stop payment of a cheque which a banker has, at the drawer's request, already certified, or marked, for payment.

The terms of a countermand of payment by a customer should be very precise, so as to admit of no question as to which cheque

is referred to. A good form is as follows—

To the X & Y Bank, Ltd., Leeds.

July 10, 19 .

Please stop payment of cheque No. 46501, dated July 9, 19 , for £100, signed by me payable to Thomas Brown; which has been lost.

ALFRED SMITH.

As to countermand of payment by wire, and further information, see PAYMENT STOPPED. (See BILL OF EXCHANGE, LOST BILL OF EXCHANGE, PAYMENT OF CHEQUE.)

COUNTERPART. A duplicate of an instrument. The word is used chiefly in connection with leases, e.g. where a house is leased for a period of years, the lessee receives the lease signed by the lessor and the lessor receives a counterpart or copy of it signed by the lessee.

For the stamp duty, see DUPLICATE.

COUNTERSIGN. A frequent arrangement made by a company with its bankers is that all cheques shall be signed by two directors and countersigned by the secretary. The countersignature is as necessary as the other signatures before payment of a cheque. Where the secretary is also a director, the company's resolution as to the signing of cheques should state whether or not the secretary may sign in both capacities. In cases where cheques are to be signed by, say, one director and countersigned by the secretary, it is often the intention of the company that two persons are to sign and not one person in two capacities. (See under COMPANIES.)

COUNTRY CLEARING. The section of the Clearing House which, until September, 1939, dealt with the clearance of all cheques drawn on banking offices outside the London postal area, i.e. outside the Town and Metropolitan Clearing areas.

Immediately before the outbreak of war in September, 1939, the Clearing House was evacuated to Stoke-on-Trent and the country clearing merged into one general clearing that was set up as an emergency measure. (See CLEARING HOUSE.)

On the return of the Clearing House at the end of the 1939–1945 War, the Country Clearing was not restored, country cheques being merged into the General Clearing.

COUNTY COUNCILS. When a bank is appointed as banker to a county council a resolution under the seal of the council should be taken and the accounts opened in the name of the treasurer.

By Section 184 of the Local Government Act, 1933, all payments to and out of the county fund must be made to and by the county treasurer, and payments are made in pursuance of an order of the council signed by three members of the finance committee and countersigned by the clerk to the council. The same order may include several payments, but no order may be made except in pursuance of a resolution of the council passed on the recommendation of the finance committee.

Cheques issued in pursuance of an order as above must be countersigned by the clerk of the county council or some person approved by the council.

Before the commencement of every financial year a county council must prepare a budget of estimated income and expenditure and precepts are then issued for the levying of rates to meet the estimated liabilities.

All borrowings require government sanction, except money for lending to a parish council, money borrowed temporarily under Section 215 (*a*) of the Local Government Act, 1933, and money raised by mortgage of sewage works and plant.

For all borrowings, a resolution of the council should be obtained. (See LOCAL AUTHORITIES.)

The London County Council is outside the provisions of the Local Government Act, 1933. The council may borrow by the issue of consolidated stock, terminable annuities, L.C.C. bills, or by way of mortgage for certain purposes, such as making loans to metropolitan borough councils (London County Council (Finance Consolidation) Act, 1912). Under Section 3 of the same Act it may borrow for a period not exceeding six months for any purpose and in any manner the council thinks fit. It may also borrow with government sanction, by issuing bearer bonds or housing bonds.

COUNTY COURT ACCOUNTS. The appointment by a registrar of a County Court of a deputy to act for him is made in a formal document on which the approval of the judge of the County Court is recorded. This authority should be produced to a banker when cheques are to be signed by a deputy registrar.

COUPON. (From Fr. *couper*, to cut.) Literally a piece cut off.

A coupon is a warrant for the payment of interest. It is usually attached to a bond or debenture, and requires to be cut off when the time has arrived for its presentment for payment. Where the interest on debentures

and bonds is paid by means of coupons, a sheet of coupons is supplied. The sheet contains a series of coupons, there being a coupon with a different date for each payment of interest, quarterly or half-yearly, as the case may be, for several, and, in cases of large coupon sheets, for many years to come. Where no date of payment appears upon the coupons, they are payable on advertised dates. If the date of payment falls upon a Sunday or a bank holiday they are payable on the succeeding business day.

Some coupons are payable either in this country or abroad, as, for example, in London in sterling, or in New York (or other places) at the current rate of exchange in London.

There are also coupons payable at a fixed exchange, for example, in London in sterling, or "in New York at the fixed exchange of $4·87 per one pound sterling." A holder of such coupons may present them for payment in London or, if there is an advantage to be secured from the exchange, he may instruct his bankers to collect them in New York and have the proceeds remitted to this country, or if the holder looks for a fall in the sterling value of the dollar he may secure the exchange profit at once by having the coupons sold in this country. A banker should take his customer's instructions when such coupons are handed in for collection.

A banker keeps a coupon diary, in which are entered particulars of the coupons falling due upon the various dates. Coupons are generally sent up to London, by a country banker, for collection, say, three or four weeks before they are due. In order to prevent them getting lost, they should be pinned to a ticket or slip. There should be a separate ticket for each different security, which should quote the number of coupons attached, and give particulars of them. The coupons should be sorted in numerical order and according to amounts.

Bonds are usually quoted as "ex coupon" on the evening of the date when the coupon is due. When a bond is sold after the coupon has been sent for collection and before it is due, the seller must pay the buyer the amount of the coupon.

When the last coupon has been detached, the part of the sheet which remains is called the "talon," and it is forwarded to the address given thereon to be exchanged for a fresh sheet of coupons. A "talon" is not, however, attached in all cases, and the bond must then be sent to obtain the new coupons.

In the event of any coupons being lost, notice should be given to the bank where they are payable. The banker will no doubt exercise care before paying them, but he cannot really refuse to pay them, unless an order to do so is received from the customer who gave the instructions for the bank to pay the coupons.

In addition to being attached to bearer bonds, coupons are attached to Registered Coupon-Bonds. (See REGISTERED COUPON-BOND.)

A coupon is exempt from stamp duty. The exemption is contained in Section 40, Finance Act, 1894:—"A Coupon for interest on a marketable security as defined by the Stamp Act, 1891, being one of a set of coupons, whether issued with the security or subsequently issued in a sheet shall not be chargeable with any stamp duty." A coupon attached to a scrip certificate is not exempt. (See BEARER BONDS, DRAWN BONDS.)

COUPON-BOND. (See REGISTERED COUPON-BOND.)

COUPON BOOK. In this book are kept particulars of all coupons sent away for collection. Columns are provided for—date sent, name of customer, name of issuers with designation, number, etc., of bond from which the coupons have been detached, and nominal amount of coupon. Two final columns show the proceeds and when received.

A record of all coupons held for collection should be made in a diary under the various dates of payment.

COURSE OF EXCHANGE. The name of the list which, prior to 1921, was issued twice a week and which gave the rates of exchange on the principal foreign centres as quoted in the London Foreign Exchange market.

Merchants, foreign bankers, and exchange brokers used to meet in the Royal Exchange every Tuesday and Thursday for dealings in foreign bills and foreign exchange, but these meetings were discontinued, as from the beginning of 1921, in favour of modern and more expeditious methods. (See CHEQUE RATE, LONG RATE, SHORT RATE, SPECIE POINTS.)

COURT BARON. The court of the lord of the manor, for freeholders. The copyholders' court was called the "customary court." Copyhold and customary property were converted into freehold on 1st January, 1926. (See COPYHOLD.)

COURT, POWERS OF (IN WINDING UP). When an order has been made for the winding up of a company, the Court shall settle a list of contributories, and shall cause the assets of the company to be collected and applied in discharge of its liabilities. The Court has power to require any banker, officer of the company, or others, to deliver to the liquidator any money or property in his hands to which the company is *prima facie* entitled; and to make an order for the payment of debts due by any contributory to the company; and to make calls on all or any of the contributories; and to order any payments to be made to the account of the liquidator at the Bank of England. The Court has also power to exclude creditors who have not proved their debts within the specified time; and to adjust the rights of contributories and distribute any surplus. When the affairs of a company have been wound up, the Court shall make an order that the company be dissolved. Most of the powers and duties of the Court may be performed by the liquidator, subject to the control of the Court. The Court has extraordinary powers to summon persons suspected of having property of the company; and, in England, to order the public examination of promoters, directors, or officers in cases where it is reported that a fraud has been committed. The Court has also power to arrest an absconding contributory. (See COMPANIES.)

COVENANT. A document setting forth the terms of a contract or agreement between two or more persons.

By the Stamp Act, 1891, the stamp duty is—

	£ s. d.
COVENANT for securing the payment or repayment of money, or the transfer or retransfer of stock. See MORTGAGE.	
COVENANT in relation to any annuity upon the original creation and sale thereof. See CONVEYANCE ON SALE.	
COVENANT in relation to any annuity (*except upon the original creation and sale thereof*) or to other periodical payments. See BOND, COVENANT, etc.	
COVENANT. Any separate deed of covenant (*not being an instrument chargeable with* ad valorem *duty as a conveyance on sale or mortgage*) made on the sale or mortgage of any property, and relating solely to the conveyance or enjoyment of, or the title to, the property sold or mortaged, or to the production of the muniments of title relating thereto, or to all or any of the matters aforesaid.	£ s. d.
Where the *ad valorem* duty in respect of the consideration or mortgage money does not exceed 10s.	A duty equal to the amount of such *ad valorem* duty.
In any other case . .	0 10 0

As to covenants in a lease, see under LEASEHOLD.

COVENANT TO SURRENDER. A deed in which the vendor of copyhold land covenanted to surrender it to the use of the purchaser. The actual surrender was to the lord of the manor to the use and behoof of the purchaser. (See COPYHOLD.)

COVER. The word is commonly used with the same meaning as security.

An advance is said to be "covered" when sufficient security is held to protect the banker from loss. (See SECURITY.)

COVER NOTE. A note issued by an insurance company when the first premium has been paid declaring (e.g. in a proposal for insurance against fire) that the proposer is "covered" in the meantime until the policy is issued.

COVERING DEED. A name sometimes given to a trust deed which covers or secures the debentures of a company.

COVERTURE. The legal state of a married woman. (See FEME COVERT.)

CREDIT BANKS. CREDIT SOCIETIES. Credit banks or agricultural co-operative credit societies, as they are often called, have proved unsuccessful in Great Britain, but on the Continent and in many other parts of the world much of the financing of agriculture is carried out by these societies.

They are especially well-developed in Germany, where the system began with the formation of a semi-philanthropic organisation by F. W. Raiffeisen in 1849. The first efforts were slow in making progress, but by 1865 a number of similar societies had been formed. The main principles of these early societies were: (1) None but persons of the highest character might become members, (2) each society might operate only in a small area where the members would be mutually well-known, (3) money to be raised from amongst the members themselves, (4) unlimited liability, (5) no paid officials, (6) all profits to go to reserve.

Societies based upon similar principles now occupy an important place in German rural economy and the Raiffeisen type of organisation has spread to every part of the world. An adaptation of the system is doing particularly good work in India in helping to free the peasants from usurers.

Shortly after the first experiments of Raiffeisen in the Rhineland, F. H. Schulze of Delitzsch in Saxony began a more strictly commercial system of co-operative credit. These banks lent to both urban and rural borrowers and obtained part of their capital by the issue of shares.

A third foundation organisation dating back to 1866 was that of Luzzatti in Italy. This has some of the characteristics of both the Raiffeisen and the Schulze-Delitzsch systems.

Upon these early co-operative efforts there has been based in almost every Continental country a network of agricultural credit banks which do very useful work among the peasant populations. They have also formed the inspiration for rural credit systems in the U.S.A., India, Japan, and the Dominions. In Germany alone there exist some 18,000 co-operative credit societies.

Yet in Great Britain the movement is practically dead. Owing largely to the strenuous personal pioneering efforts of the late Sir Horace Plunkett there has been established a good number of such societies in Ireland, but the movement was never so strong in the rest of the British Isles.

From the end of the nineteenth century enthusiastic efforts were made by a small group of pioneers to introduce some system of agricultural credit co-operation into England. In 1893 the Agricultural Banks Association was formed and this combined early in the present century with the Agricultural Organisation Society (founded 1900) which was interested in agricultural co-operation generally. In 1908 a Central Co-operative Bank was established and by 1911 the movement had achieved a measure of success in that about forty-five small co-operative credit societies were in operation, but the total amount of their loans was under £1,500.

Very little progress was made after that time in spite of the fact that the Government began to take an interest in the work. In 1913 the Board of Agriculture and Fisheries commenced an annual grant to the Agricultural Organisation Society and in the same year it was announced in the House of Commons that this Board had been in communication with the leading joint-stock banks which had branches in the rural districts, with regard to the assistance which the banks could offer, in accordance with ordinary banking principles, to registered Co-operative Credit Societies, consisting mainly of smallholders and allotment holders.

It was stated that most of the banks were willing to assist in the formation of a society and to give advice on matters of book-keeping. They would also favourably consider the acceptance by managers of the post of unpaid treasurer, provided that it did not involve membership of the society. These banks were prepared to allow as good rates as possible on balances in their hands. They would also be prepared to give favourable consideration to applications for advances from such societies, subject to the usual conditions as to repayment and to their being satisfied that the liability of the members of the society formed a good security. Interest charged on such advances would be at a favourable fixed rate subject to a year's notice of alteration.

Very few, if any, advances were ever made on these lines for the reason that the movement made very little progress subsequently.

In 1923 the Government subsidy to the Agricultural Organisation Society ceased and by 1925 the Society had to cease functioning as its income from voluntary contributions was insufficient to keep it going. Yet in the same year that this subsidy ceased the Committee on Agricultural Credit reported (Cmd. 1810) and recommended that an endeavour to meet the short-term credit requirements of agriculture should be made by means of local Credit Societies to be subsidised by the Ministry of Agriculture to the extent of £1 for each £1 share, 5s. paid.

These recommendations were made law by the Agricultural Credits Act, 1923, but this failed to achieve any success. A mere three or four small societies were formed and by 1927 it was officially admitted that the Act had been a failure. (*Report on Agricultural Credit*, by R. R. Enfield.) The Agricultural Credits Act, 1928 (*q.v.*) has superseded these schemes.

CREDIT FORM. In America, a credit form is a statement of assets and liabilities to be signed by a prospective borrower. In the report of the committee of the American Bankers' Association appointed to draw up standardised credit forms, it is explained that "in compiling these forms,

it has been the aim of the committee to elicit all the information necessary to obtain an intelligent insight into the financial and other conditions of the individual or business under consideration, and at the same time to make its questions as brief and simple as possible."

CREDIT INSURANCE. A method of insuring the payment of commercial debts. By taking out a policy a seller of goods may be relieved of the whole, or part, of any loss he may sustain should the buyer become insolvent and thereby be unable to pay the seller the full amount of the debt. Policies are granted to cover bills of exchange drawn in respect of goods sold and delivered. All duly accepted bills must be declared to the insurance company. In the event of dishonour of any duly accepted bill, the agreed proportion of such bill as is covered by the policy is paid to the assured on satisfactory proof of such dishonour and assignment of the debt to the company. Any amount collected by the company from the estate of the defaulter in excess of the amount paid by the company (plus interest and charges) is returned to the assured. (See EXPORT CREDITS GUARANTEE DEPARTMENT.)

CREDIT SLIP. The form which is filled up and signed by a customer when paying in to the credit of an account. It should be dated by the customer for the day on which the payment to credit is handed across the counter, or, if sent by post, the date of its dispatch.

A credit slip should show how the amount is made up, in silver, copper, notes, cheques, or bills.

Another name for a credit slip is "paying-in slip." (See PAYING-IN SLIPS.)

CREDITS OPENED AT OTHER OFFICES. (See STANDING CREDITS.)

CRISES, FINANCIAL. (See PANICS.)

CRORE. Ten million rupees, written Rs. 10,000,000. 100 lakhs (*q.v.*) = 1 crore.

CROSSED CHEQUE. A crossed cheque is defined by the Bills of Exchange Act, 1882, Section 76, as follows—

"(1) Where a cheque bears across its face an addition of—

"(*a*) The words 'and company' or any abbreviation thereof between two parallel transverse lines, either with or without the words 'not negotiable'; or

"(*b*) Two parallel transverse lines simply, either with or without the words 'not negotiable';

"that addition constitutes a crossing and the cheque is crossed generally.

"(2) Where a cheque bears across its face an addition of the name of a banker, either with or without the words 'not negotiable,' that addition constitutes a crossing, and the cheque is crossed specially and to that banker."

By Section 77—

"(1) A cheque may be crossed generally or specially by the drawer.

"(2) Where a cheque is uncrossed, the holder may cross it generally or specially.

"(3) Where a cheque is crossed generally, the holder may cross it specially.

"(4) Where a cheque is crossed generally or specially, the holder may add the words 'not negotiable.'

"(5) Where a cheque is crossed specially, the banker to whom it is crossed may again cross it specially to another banker for collection.

"(6) Where an uncrossed cheque, or a cheque crossed generally, is sent to a banker for collection, he may cross it specially to himself."

By Section 78—

"A crossing authorised by this Act is a material part of the cheque; it shall not be lawful for any person to obliterate or, except as authorised by this Act, to add to or alter the crossing."

The duties of a banker with regard to crossed cheques are set forth in Section 79—

"(1) Where a cheque is crossed specially to more than one banker except when crossed to an agent for collection being a banker, the banker on whom it is drawn shall refuse payment thereof.

"(2) Where the banker on whom a cheque is drawn which is so crossed nevertheless pays the same, or pays a cheque crossed generally otherwise than to a banker, or if crossed specially otherwise than to the banker to whom it is crossed, or his agent for collection being a banker, he is liable to the true owner of the cheque for any loss he may sustain owing to the cheque having been so paid.

"Provided that where a cheque is presented for payment which does not at the time of presentment appear to be crossed, or to have had a crossing which has been

obliterated, or to have been added to or altered otherwise than as authorised by this Act, the banker paying the cheque in good faith and without negligence shall not be responsible or incur any liability, nor shall the payment be questioned by reason of the cheque having been crossed, or of the crossing having been obliterated or having been added to or altered otherwise than as authorised by this Act, and of payment having been made otherwise than to a banker or to the banker to whom the cheque is or was crossed, or to his agent for collection being a banker, as the case may be."

A banker paying a crossed cheque is afforded protection by Section 80—

"Where the banker, on whom a crossed cheque is drawn, in good faith and without negligence pays it, if crossed generally, to a banker, or if crossed specially, to the banker to whom it is crossed, or his agent for collection being a banker, the banker paying the cheque, and, if the cheque has come into the hands of the payee, the drawer shall respectively be entitled to the same rights and be placed in the same position as if payment of the cheque had been made to the true owner thereof."

As to the effect of crossing upon the holder, Section 81 provides—

"Where a person takes a crossed cheque which bears on it the words 'not negotiable,' he shall not have and shall not be capable of giving a better title to the cheque than that which the person from whom he took it had."

A collecting banker is afforded protection by Section 82—

"Where a banker in good faith and without negligence receives payment for a customer of a cheque crossed generally or specially to himself, and the customer has no title or a defective title thereto, the banker shall not incur any liability to the true owner of the cheque by reason only of having received such payment." (See cases under COLLECTING BANKER, as to negligence.)

The word "customer" in Section 82 includes another bank. (See the case of *Importers Company, Ltd.* v. *Westminster Bank, Ltd.*, under ACCOUNT PAYEE.)

The words "without negligence" in Section 82 "cannot mean without breach of duty on the part of the banker towards himself or towards the person who is his customer. They must mean without taking due care to protect the person whose name appears in the cheque as being the payee." (Bailhache, J., in *Ladbroke & Co.* v. *Todd* (1914), 19 Com. Cas. 256.)

This Section refers only to cheques which are already crossed when they come into a banker's hands. Some bankers have a notice on the paying-in slips requesting their customers to cross all cheques before paying them in. A holder may cross a cheque generally or specially (Section 77 (2) and see p. 196).

The protection given by this Section applies to crossed cheques only when they are collected on behalf of a customer. Section 82, as it stands, does not protect a collecting banker who allows his customer to draw against crossed cheques paid in to credit of his account, before the proceeds for them have been received from the banker on whom the cheques are drawn. Much litigation has taken place around this Section, but it has now been amended by the Bills of Exchange (Crossed Cheques) Act, 1906, passed August 4, 1906, being "an Act to amend Section 82 of the Bills of Exchange Act, 1882." The amendment is—

"Section 1. A banker receives payment of a crossed cheque for a customer within the meaning of Section 82 of the Bills of Exchange Act, 1882, notwithstanding that he credits his customer's account with the amount of the cheque before receiving payment thereof." (See the case of *Morison* v. *London County & Westminster Bank*, under PER PRO.)

It has been held that to make a person a customer of a banker there must be some sort of account, either a deposit or a current account or some similar relation. (See cases under CUSTOMER.)

A dividend warrant may be crossed. Section 95 says—

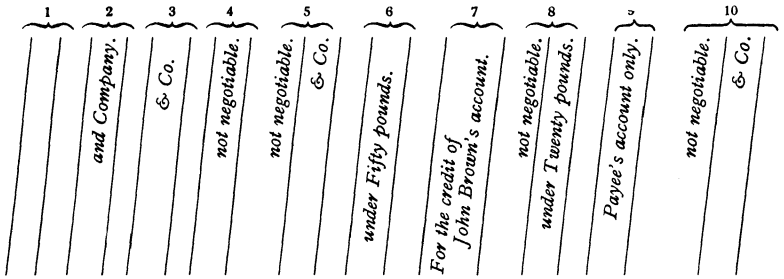
"The provisions of this Act as to crossed cheques shall apply to a warrant for payment of dividend." The provisions do not apply to bills, which cannot, therefore, be crossed like cheques. If a bill should be crossed, the crossing is of no effect.

Money orders and postal orders may be crossed.

The crossed cheque sections of the Bills of Exchange Act, 1882, "shall extend to any document issued by a customer of any banker, and intended to enable any person or body corporate to obtain payment from such banker of the sum mentioned in such document, and shall so extend in like manner

as if the said document were a cheque: Provided that nothing in this Act shall be deemed to render any such document a negotiable instrument" (Revenue Act, 1883, Section 17). See remarks under RECEIPT ON CHEQUE.

Below are specimens of crossings which come under the definition of a general crossing.



But any of these, or similar, words across a cheque, without the transverse lines or with only one transverse line, do not constitute a crossing.

It is to be noted that where such words as "Under Fifty pounds" are written across a cheque, if a line is drawn above and below those words the lines constitute a general crossing, although it may not have been the intention to cross it.

If a cheque is crossed "& Coy., Leeds," the word Leeds may be ignored, as it is not part of the crossing.

At the foot of the page are specimens of crossings which are included in the definition of a special crossing.

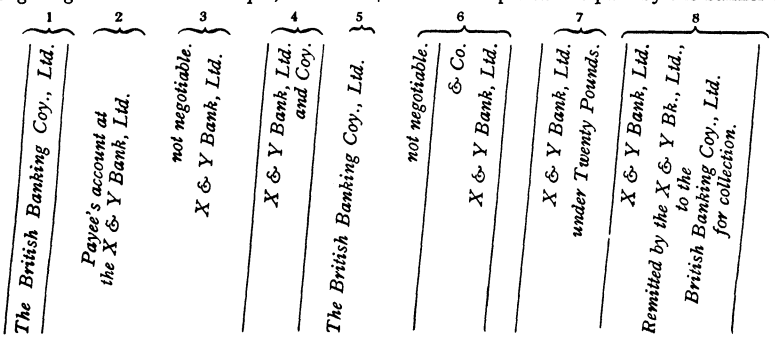
There are many varieties of general and special crossings. As a rule, the transverse lines go right across the cheque, but frequently they are drawn only a half or a third way across, and in extreme cases the lines are so short as to be easily overlooked. A cheque is occasionally met with which has a × placed upon it with the object of making it a crossed cheque. Such a mark does not, of course, constitute it a crossed cheque.

The position of the lines is usually about the middle of a cheque, but they are sometimes drawn across a corner of it.

The place of any words added to the transverse lines is usually between or immediately above or immediately below the lines, but in some cases they are found at a considerable distance from the crossing, and occasionally are found written even below the amount. It is questionable, however, whether words which are not written between or near to the transverse lines could be held to be a part of the crossing.

Crossings may be written, stamped, printed, or perforated. Many mistakes as to the amount would be prevented if customers avoided drawing the crossing lines through the figures of a cheque.

By the above sections it is seen that a crossed cheque can be paid by the banker on



whom it is drawn, if crossed generally, only to another banker—if crossed specially, only to the banker whose name appears in the crossing. If the holder of a crossed cheque is a customer of the banker on whom it is drawn, the banker may place such cheque, if it is so desired, to the credit of that customer's account, though he should not pay cash for it. The customer, however, may forthwith draw a cheque upon his account for the cash required.

Where a cheque crossed generally and drawn upon one branch is presented for payment at another branch of the same bank, the two branches are, for this purpose, considered to be two banks, and the banker paying such a cheque fulfils the requirements of the Act to pay it only to another banker. In *Gordon* v. *London City and Midland Bank*, [1902] 1 K.B. 242, the Master of the Rolls, referring to cheques of that description, said: "The defendants, whose branch bank receives payment from another branch, are certainly a bank. It may be that the payment is to themselves; still, it is a payment made to a bank, and the payment is also made by a bank."

Where a cheque is crossed, and a payee wishes to obtain cash for it from the banker on whom it is drawn, it is customary for the drawer to cancel the crossing and to write "pay cash" upon the cheque. The alteration, called "opening the crossing," should be signed by the drawer. A banker, however, should be on his guard when requested to cash a cheque where the crossing has been cancelled, lest by doing so he renders himself liable to a true owner who took the cheque in a crossed condition. (See OPENING A CROSSING.)

The transverse lines are an essential part of a general crossing, but they are not necessary in a special crossing. The name of a banker by itself across the face of a cheque is a special crossing, or the name may be placed between transverse lines, or it may be placed inside a square or other form of margin.

The dishonour of a crossed cheque does not cancel the crossing. The cheque continues to be a crossed cheque, and, if re-presented, requires to be re-presented in accordance with the crossing. If a dishonoured crossed cheque bears the crossing of a country banker and the crossing of his London agents, on re-presentation the cheque may, if necessary, be presented direct by the country banker.

Where a crossed cheque is remitted to an agent for collection, it is customary for the banker to cross it thus: "X & Y Bank, Ltd., to the British Bank, Ltd., for collection."

By Section 79, quoted above, when a cheque is crossed to two bankers, except when crossed to an agent for collection being a banker, the banker on whom it is drawn shall refuse payment. If the presenting banker guarantees the banker on whom it is drawn, such a cheque would usually be paid. But a cheque which is crossed to two branches of the same bank, or to a branch and the head office, is not treated as being crossed to two bankers. A cheque crossed "X & Y Bank" should not be placed to a customer's credit at the British Bank, because the banker on whom it is drawn can pay it only to the X & Y Bank.

It is customary for a collecting banker to whom a cheque is specially crossed, to place an impress of his stamp upon it, as an indication to the paying banker that it has been through the hands of that banker, but a cheque should not be dishonoured merely because the collecting banker has omitted to stamp it.

The words "not negotiable," added to a general or a special crossing, do not operate as a restriction upon the transfer of a cheque, but merely give notice to anyone taking the cheque that he cannot obtain a better title than the person had from whom he received it. The words "not negotiable" do not by themselves constitute a crossing. (See NOT NEGOTIABLE.)

Many cheques have such words as "place to credit of John Brown's account," "account of payee," "account John Jones" added to the crossing. The Bills of Exchange Act does not make any particular reference to an addition of that nature, though it does say at Section 78 that it shall not be lawful for any person to obliterate or, except as authorised by this Act, to add to or alter the crossing. If the paying banker carries out his duty, as prescribed by the Act, and pays a cheque crossed generally to a banker, and a cheque crossed specially to the banker named, he is not concerned at all as to whether, or not, the collecting banker carried out the instructions to place the proceeds to any account indicated. If a cheque drawn on the British Banking Co., Ltd., and crossed "X & Y Bank, Ltd., for the account of John Brown," is paid in to the X & Y Bank, Ltd., by Tom Jones to his own credit, it is difficult to believe that the X & Y Bank, Ltd., would be exonerated from blame if they ignored the clear indication

upon the cheque and passed it to the credit of Jones. Accordingly, in practice, a banker who receives such a cheque for collection, requires that it be placed to the credit of the account as named in the crossing. In *National Bank* v. *Silke*, [1891] 1 Q.B. 435, where a cheque was crossed "account of Moriarty, National Bank," Lord Justice Lindley said with reference to those words: "It cannot be contended that they prohibit transfer, and I do not think that they indicate an intention that the cheque should not be transferable. They amount to nothing more than a direction to the plaintiffs to carry the amount of the cheque to Moriarty's account when they have received it."

In *Akrokerri (Atlantic) Mines, Limited* v. *The Economic Bank*, [1904] 2 K.B. 465, where certain cheques were crossed "account Economic Bank," Mr. Justice Bigham said: "In my opinion these words are not in any sense an addition to the crossing. A crossing is a direction to the paying bank to pay the money generally to a bank, or to a particular bank, as the case may be, and when this has been done the whole purpose of the crossing has been served. The paying bank has nothing to do with the application of the money after it has once been paid to the proper receiving banker. The words 'account A B' are a mere direction to the receiving bank as to how the money is to be dealt with after receipt."

With reference to the words "how the money is to be dealt with after receipt," as a collecting banker may now pass crossed cheques at once to the credit of his customer, it would appear to follow that the words "Account A B" are a direction to the receiving banker as to how he must deal with the cheques when he receives them. (See ACCOUNT PAYEE.)

The object of crossing cheques is to insure the safe transmission of the money from the sender to the receiver. A general crossing would prevent a thief from obtaining value from a banker for a cheque, unless he had a banking account. The usual special crossing would prevent him from obtaining value unless he had an account with the banker to whom the cheque was crossed. Thus the thief's chance of profiting by his plunder becomes still further remote.

If a collecting banker gives cash over the counter for a crossed cheque on another banker, he does so at his own risk, because if an indorsement is forged he is liable to the true owner. (See CHEQUE, COLLECTING BANKER.)

"CROSSED TO TWO BANKERS." An answer which is sometimes marked upon a cheque by the drawee banker, who is returning it unpaid for this reason.

Where a cheque is crossed to two bankers, except when crossed to an agent for collection being a banker, the banker on whom it is drawn shall refuse payment thereof (Section 79, Bills of Exchange Act, 1882).

But a cheque crossed "X & Y Bank, Ltd., Leeds," and also stamped "X & Y Bank, Ltd., York," is not crossed to two bankers, as Leeds and York are branches of the same banker.

CROSS-FIRING. Cross-firing is where one person draws a bill or cheque upon another, and the latter, at the same time, draws a bill or cheque upon the former. If the banker allows drawings against uncleared effects, this device can continue unchecked. When a banker detects signs of such a practice, it should act as a danger signal and put him at once on his guard.

CROWN. A crown is of the value of five shillings, and its standard weight is 436·36363 grains troy. Its standard fineness is thirty-seven-fortieths fine silver, three-fortieths alloy; altered by the Coinage Act, 1920, to one-half fine silver, one-half alloy. No crowns were struck between 1902 and 1928.

Silver crowns were first coined in 1551. (See COINAGE.)

CUM DIV. Short for cum dividend, "with dividend." It means that the purchaser of shares bought on this understanding is entitled to the dividend due to be paid, and if the dividend warrant is sent by the company to the seller, the latter must hand over the amount to the purchaser. Most stocks are "cum div." until the Pay Day following the declaration of dividend. (See PAY DAY.)

CUM DRAWING. With any benefit there may be from a drawing of bonds for payment which is due to be made.

CUM RIGHTS. A purchaser of shares "cum rights" acquires any rights attaching to the shares, e.g. to take up further issues, etc.

CUMULATIVE DIVIDEND. Preference shares have a preferential right to dividend before ordinary shares, and if the profits of the company in one year are not sufficient to pay the full dividend, the profits of succeeding years are used for that purpose, and, until the preference shares receive a full dividend for each year, the ordinary shares receive nothing. The dividend in such cases is called cumulative.

If, however, the preferential right as to

dividend is confined merely to the profits of each year, the dividend is non-cumulative.

CUMULATIVE PARTICIPATING PREFERENCE SHARES. (See PREFERENCE SHARES.)

CUPRO-NICKEL COIN. By the Coinage Act, 1946, cupro-nickel coins were substituted for silver coins, which were gradually withdrawn from circulation. Cupro-nickel coins are composed of three-quarter copper and one-quarter nickel. The change was made on account of the high price of silver after the second German war and the necessity for paying back silver loaned from America under lease-lend arrangement.

CURATOR BONIS. (See Appendix on "Scottish Banking" under JUDICIAL FACTORS.)

CURRENCY. The word was originally applied to the currency, or passing from hand to hand, of money, but it has now come to be applied to the money itself, gold, silver and copper. Bills of Exchange, bank notes, cheques and any other documents which act as a substitute for coins are also included under that term. (See CURRENCY NOTES.)

The currency, or circulating medium, by which sales and purchases were effected in olden times, was represented in different countries by articles, such as sugar, furs, fish, cloth, etc., and even at the present day in certain uncivilised nations, cowries, salt, and blocks of tea may be found in use.

The period for which a bill of exchange is drawn, or the period which it has to run before maturity, is spoken of as the currency of the bill. The currency of a bill payable after sight begins when the bill is accepted. (See COINAGE, MONEY.)

A cheque drawn in foreign currency is referred to under CHEQUE.

CURRENCY AND BANK NOTES ACT, 1928. The principal purpose of this Act was to transfer the currency note issue of the Treasury to the Bank of England, and this was effected on 22nd November, 1928.

The principal Sections are as follow—

Amendment with respect to powers of Bank of England to issue Bank Notes.

"1. (1) Notwithstanding anything in any Act—

"(*a*) The Bank may issue bank notes for one pound and for ten shillings;

"(*b*) any such bank notes may be issued at any place out of London without being made payable at that place, and wherever issued shall be payable only at the head office of the Bank;

"(*c*) any such bank notes may be put into circulation in Scotland and Northern Ireland and shall be current and legal tender in Scotland and Northern Ireland as in England.

"(2) Section six of the Bank of England Act, 1833 (which provides that bank notes shall be legal tender), shall have effect as if for the words 'shall be a legal tender to the amount expressed in such note or notes and shall be taken to be valid as a tender to such amount for all sums above five pounds on all occasions on which any tender of money may be legally made' there were substituted the words 'shall be legal tender for the payment of any amount.'

"(3) The following provisions shall have effect so long as subsection (1) of Section one of the Gold Standard Act, 1925, remains in force—

"(*a*) notwithstanding anything in the proviso to Section six of the Bank of England Act, 1833, bank notes for one pound or ten shillings shall be deemed a legal tender of payment by the Bank or any branch of the Bank, including payment of bank notes:

"(*b*) the holders of bank notes for five pounds and upwards shall be entitled, on a demand made at any time during office hours at the head office of the Bank or, in the case of notes payable at a branch of the Bank, either at the head office or at that branch, to require in exchange for the said bank notes for five pounds and upwards bank notes for one pound or ten shillings.

"(4) The Bank shall have power, on giving not less than three months' notice in the London, Edinburgh, and Belfast *Gazettes*, to call in the bank notes for one pound or ten shillings of any series on exchanging them for bank notes of the same value of a new series.

"(5) Notwithstanding anything in Section eight of the Truck Act, 1831, the

payment of wages in bank notes of one pound or ten shillings shall be valid, whether the workman does or does not consent thereto.

Amount of Bank of England Note Issue.

"2. (1) Subject to the provisions of this Act the Bank shall issue bank notes up to the amount representing the gold coin and gold bullion for the time being in the issue department, and shall in addition issue bank notes to the amount of two hundred and sixty million pounds in excess of the amount first mentioned in this Section, and the issue of notes which the Bank are by or under this Act required or authorised to make in excess of the said first mentioned amount is in this Act referred to as 'the fiduciary note issue.'

"(2) The Treasury may at any time on being requested by the Bank, direct that the amount of the fiduciary note issue shall for such period as may be determined by the Treasury, after consultation with the Bank, be reduced by such amount as may be so determined.

Securities for Note Issue to be held in Issue Department.

"3. (1) In addition to the gold coin and bullion for the time being in the issue department, the Bank shall from time to time appropriate to and hold in the issue department securities of an amount in value sufficient to cover the fiduciary note issue for the time being.

"(2) The securities to be held as aforesaid may include silver coin to an amount not exceeding five and one-half million pounds.

"(3) The Bank shall from time to time give to the Treasury such information as the Treasury may require with respect to the securities held in the issue department, but shall not be required to include any of the said securities in the account to be taken pursuant to Section five of the Bank of England Act, 1819.

Transfer of Currency Notes Issue to Bank of England.

"4. (1) As from the appointed day all currency notes issued under the Currency and Bank Notes Act, 1914, certified by the Treasury to be outstanding on that date (including currency notes covered by certificates issued to any persons under Section two of the Currency and Bank Notes (Amendment) Act, 1914, but not including currency notes called in but not cancelled) shall, for the purpose of the enactments relating to bank notes and the issue thereof (including this Act) be deemed to be bank notes, and the Bank shall be liable in respect thereof accordingly.

"(2) The currency notes to which subsection (1) of this Section applies are in this Act referred to as 'the transferred currency notes.'

"(3) At any time after the appointed day, the Bank shall have power, on giving not less than three months' notice in the London, Edinburgh, and Belfast *Gazettes*, to call in the transferred currency notes on exchanging them for bank notes of the same value.

"(4) Any currency notes called in but not cancelled before the appointed day may be exchanged for bank notes of the same value.

Transfer to Bank of certain part of Assets of Currency Note Redemption Account.

"5. (1) On the appointed day, in consideration of the Bank undertaking liability in respect of the transferred currency notes, all the assets of the Currency Note Redemption Account other than Government securities shall be transferred to the issue department, and there shall also be transferred to the issue department out of the said assets Government securities of such an amount in value as will together with the other assets to be transferred as aforesaid represent in the aggregate the amount of the transferred currency notes.

For the purpose of this subsection the value of any marketable Government securities shall be taken to be their market price as on the appointed day less the accrued interest, if any, included in that price.

"(2) Any bank notes transferred to the Bank under this Section shall be cancelled.

"(3) Such of the said Government securities as are not transferred to the Bank under the foregoing provisions of this section shall be realised and the amount realised shall be paid into the Exchequer at such time and in such manner as the Treasury direct.

Profits of Note Issue to be Paid to Treasury.

"6. (1) The Bank shall, at such times and in such manner as may be agreed between the Treasury and the Bank, pay to the Treasury an amount equal to the profits arising in respect of each year in the issue department, including the amount of any bank notes written off under Section six of the Bank Act, 1892, as amended by this Act, but less the amount of any bank notes so written off which have been presented for payment during the year and the amount of any currency notes called in but not cancelled before the appointed day which have been so presented.

"(2) For the purposes of this Section the amount of the profits arising in any year in the issue department shall, subject as aforesaid, be ascertained in such manner as may be agreed between the Bank and Treasury.

"(3) For the purposes of the Income Tax Acts, any income of, or attributable to, the issue department shall be deemed to be income of the Exchequer, and any expenses of, or attributable to, the issue department shall be deemed not to be expenses of the Bank.

"(4) The Bank shall cease to be liable to make any payment in consideration of their exemption from stamp duty on bank notes.

Amendment of Section 6 of 55 and 56 Vict. c. 48.

"7. Section six of the Bank Act, 1892 (which authorises the writing off of bank notes which are not presented for payment within forty years of the date of issue), shall have effect as if, in the case of notes for one pound or ten shillings, twenty years were substituted for forty years, and as if, in the case of any such notes being transferred currency notes, they had been issued on the appointed day and, in the case of any such notes not being transferred currency notes, they had been issued on the last day on which notes of the particular series of which they formed part were issued by the Bank.

Power to Increase Amount of Fiduciary Note Issue.

"8. (1) If the Bank at any time represent to the Treasury that it is expedient that the amount of the fiduciary note issue shall be increased to some specified amount above two hundred and sixty million pounds, the Treasury may authorise the Bank to issue bank notes to such an increased amount, not exceeding the amount specified as aforesaid, and for such period, not exceeding six months, as the Treasury think proper.

"(2) Any authority so given may be renewed or varied from time to time on the like representation and in like manner:

Provided that, notwithstanding the foregoing provision, no such authority shall be renewed so as to remain in force (whether with or without variation) after the expiration of a period of two years from the date on which it was originally given, unless Parliament otherwise determines.

"(3) Any minute of the Treasury authorising an increase of the fiduciary note issue under this Section shall be laid forthwith before both Houses of Parliament.

Amendment as to Issue of Notes by Banks in Scotland and Northern Ireland.

"9. (1) For the purpose of any enactment which in the case of a bank in Scotland or Northern Ireland limits by reference to the amount of gold and silver coin held by any such bank the amount of the notes which that bank may have in circulation, bank notes held by that bank or by the Bank on account of that bank, shall be treated as being gold coin held by that bank.

"(2) A bank in Scotland or Northern Ireland may hold the coin and bank notes by reference to which the amount of the bank notes which it is entitled to have in circulation is limited at such of its offices in

Scotland or Northern Ireland, respectively, not exceeding two, as may from time to time be approved by the Treasury.

Amendment of Section 6 of 7 and 8 Vict. c. 32.

"10. The form prescribed by Schedule A to the Bank Charter Act, 1844, for the account to be issued weekly by the Bank under Section six of that Act may be modified to such an extent as the Treasury, with the concurrence of the Bank, consider necessary, having regard to the provisions of this Act.

Power of Bank of England to require Persons to make Returns of and to sell Gold.

"11. (1) With a view to the concentration of the gold reserves and to the securing of economy in the use of gold, the following provisions of this Section shall have effect so long as subsection (1) of Section one of the Gold Standard Act, 1925, remains in force.

"(2) Any person in the United Kingdom owning any gold coin or bullion to an amount exceeding ten thousand pounds in value shall, on being required so to do by notice in writing from the Bank, forthwith furnish to the Bank in writing particulars of the gold coin and bullion, owned by that person, and shall, if so required by the Bank, sell to the Bank the whole or any part of the said coin or bullion, other than any part thereof which is *bona fide* held for immediate export or which is *bona fide* required for industrial purposes, on payment therefor by the Bank, in the case of coin, of the nominal value thereof, and in the case of bullion, at the rate fixed in Section four of the Bank Charter Act, 1844.

Penalty for Defacing Bank Notes.

"12. If any person prints, or stamps, or by any like means impresses, on any bank note any words, letters or figures, he shall, in respect of each offence, be liable on summary conviction to a penalty not exceeding one pound."

Section 12 does not affect the negotiability of any such defaced note. The only person who is liable to the penalty is the person who defaces the note. The Bank does not object to a bank placing its code stamp and serial number on the back of notes for £5. For amendments to the Act, see CURRENCY AND BANK NOTES ACT, 1939.

CURRENCY AND BANK NOTES ACT, 1939. The principal purposes of this Act, operative on 1st March, 1939, were to amend the law governing the amount of the fiduciary note issue and to provide for the weekly valuation of the assets of the Issue Department of the Bank of England.

The principal sections are as follows—

Amount of Fiduciary Note Issue.

"1. The fiduciary note issue shall, unless and until, after the commencement of this Act, it is reduced under subsection (2) of section two of the Currency and Bank Notes Act, 1928, or increased under subsection (1) of section eight of that Act, be three hundred million pounds and accordingly—

"(*a*) in subsection (1) of the said section two and subsection (1) of the said section eight, for the words 'two hundred and sixty million pounds' there shall be substituted the words 'three hundred million pounds'; and

"(*b*) any Treasury Minute in force at the commencement of this Act under the said section eight shall cease to have effect.

Valuation of Assets of Issue Department.

"2.—(1) The assets held in the Issue Department of the Bank of England (in this Act referred to as 'the Department') shall be valued on the day on which this Act comes into operation and thereafter once in each week.

"(2) For the purposes of every such valuation, the assets shall be valued at such prices as may be certified by the Bank of England to be the current prices of those assets respectively on the day of the valuation, ascertained in such manner as may be agreed between the Treasury and the Bank:

"Provided that adjustments may, if the Treasury so direct, be made in

respect of interest affecting the current price of any securities and, in the case of securities standing at a premium, in respect of that premium.

"(3) If, as the result of any such valuation, the value of the assets then held in the Department differs from the total amount of the Bank of England notes then outstanding, there shall be paid to the Department from the Exchange Equalisation Account (in this Act referred to as 'the Account') or to the Account from the Department such sum as will counteract that difference, and separate payments may be made in respect of differences arising from changes in the value of gold and differences arising from changes in the value of other assets.

"Any payment required by this subsection may be effected in cash or, by agreement between the Treasury and the Bank of England, by a transfer of gold or securities (whichever is appropriate), or partly in cash and partly by such a transfer.

Consequential Provisions.

"3.—(1) Gold held in the Department may be sold to the Account and gold may be bought for the Department from the Account, in each case at the price at which gold was valued for the purposes of the last valuation under the last preceding section.

"(2) The Treasury shall pay into the Account all sums received by them after the commencement of this Act in respect of the profits of the Department under section six of the Currency and Bank Notes Act, 1928.

Miscellaneous Provisions as to Bank of England Notes.

"4.—(1) Notwithstanding anything in any enactment, bank notes for five pounds and upwards may be issued by the Bank of England otherwise than at their head office without being made payable at the place of issue, and all bank notes for five pounds and upwards issued by the Bank shall, wherever issued, be payable only at the head office of the Bank unless expressly made payable also at some other place.

"(2) Section four of the Bank Charter Act, 1844 (which requires the Department to issue notes in return for gold), shall cease to have effect."

(See BANK RETURN, FIDUCIARY ISSUE.)

CURRENCY BILLS. Bills which are drawn in foreign currency.

CURRENCY BONDS. Bonds which are repayable in the currency of the country where they are issued.

CURRENCY CERTIFICATES. Certificates which are issued to bankers and others by the Treasury of the United States against deposits of quantities of Treasury Notes and Government Notes.

CURRENCY (DEFENCE) ACT, 1939. This was passed on 7th September, 1939, and increased the fiduciary issue to £580,000,000 as a result of transferring gold to the value of £280,000,000 from the Issue Department of the Bank of England to the Exchange Equalisation Account for the purpose of concentrating the country's gold resources in one reserve.

CURRENCY NOTES. Currency Notes for £1 and 10s. were issued by the Treasury on the outbreak of war with Germany in 1914. By the Currency and Bank Notes Act, 1914, "currency notes shall be legal tender in the United Kingdom for the payment of any amount" (Section 1 (1)). "The holder of a currency note shall be entitled to obtain on demand, during office hours at the Bank of England, payment for the note at its face value in gold coin which is for the time being legal tender in the United Knigdom" (Section 1 (3)). By the Gold Standard Act, 1925, until otherwise provided by Proclamation, Currency Notes shall be convertible into coin only at the option of the Bank of England. (See GOLD STANDARD ACT, 1925.)

By a Treasury order, currency notes of the first and second issues ceased to be legal tender as from 11th June, 1920. Currency notes of the second issue were surcharged in Arabic characters for use in Turkish territory under occupation.

By the Currency and Bank Notes Act, 1928, the currency note issue of the Treasury was, on 22nd November, 1928, transferred to the Bank of England, and all outstanding currency notes on that date were, for the purpose of the enactments relating to bank notes and the issue thereof, deemed to be bank notes and the Bank made liable in respect thereof. (See CURRENCY and BANK NOTES ACT, 1928.)

CURRENCY OF BILL. The period during

which a bill has to run before it is due. (See DAYS OF GRACE, TIME OF PAYMENT OF BILL.)

CURRENT ACCOUNT. A current or running account is the active account on which cheques are drawn and to which credits are paid, as opposed to a deposit account on which normally cheques are not drawn and which usually is not frequently worked.

Before opening a current account for a stranger a banker requires an introduction from someone known to him or a satisfactory reference, and no cheque book should be given to the new customer until this has been obtained. Otherwise worthless cheques may be circulated. Furthermore, the proposed customer may be an undischarged bankrupt or may seek to use the account for the collection of stolen cheques. In this latter case a bank will be held to have been negligent in not obtaining an introduction or reference and thus lose the protection of Section 82 of the Bills of Exchange Act, 1882. (*Ladbroke* v. *Todd* (1914), 111 L.T. 43.) A reference should not be accepted from a stranger without establishing his *bona fides*. (*Hampstead Guardians* v. *Barclays Bank, Ltd.* (1923), 39 T.L.R. 229.)

If the proposed customer is an employee, details of his employer must be ascertained, and, in the case of a married woman, details of her husband's employer, in order to be armed with the knowledge necessary to detect any fraudulent dealings with the employer's cheques. (*Lloyds Bank, Ltd.* v. *E. B. Savory & Co.*, [1933] A.C. 201.)

If an account is transferred from another bank, the reason for the change should be ascertained.

All necessary mandates should be taken at the time an account is opened, e.g. for joint account-holders or companies. In the latter case the mandate should be in the form of a resolution authorising the opening of the account and detailing signing instructions *re* cheques, bills, securities, etc. The opening of the account, if in credit, makes the banker the debtor of his customer and liable to honour the latter's cheques regularly drawn to the extent of his balance.

As to several accounts at the same branch, see SET-OFF: as to accounts at different branches, see BRANCHES.

(See ADVANCES, AGENT, APPROPRIATION OF PAYMENTS, AUTHORITIES, BANKRUPT PERSON, CLAYTON'S CASE, CLOSING AN ACCOUNT, COMPANIES, CUSTOMER, DEATH OF CUSTOMER, EXECUTOR, GARNISHEE ORDER, INFANTS, JOINT ACCOUNT, LOCAL AUTHORITIES, MANDATE, PAROCHIAL CHURCH COUNCIL, PARTNERSHIPS, PUBLIC ACCOUNT, SIGNATURE, SOCIETIES, SOLICITORS' ACCOUNTS, TRUSTEES.)

CURRENT ACCOUNT LEDGERS. Each account in the current account ledgers is headed with the full Christian names and surname of the customer, his address and designation; any particulars regarding signing upon the account, or credits opened on behalf of the customer, or whether the customer is a shareholder of the bank, with the amount of his holding, are also recorded at the top of the page. If it is an overdrawn account, the amount of the sanctioned limit, the date when granted and the date when it will expire, are entered, so that these particulars may always be under the eye of the ledger-keeper when posting the account.

A note of all "stopped" cheques should be entered against the respective accounts.

Columns are provided in the ledgers for the date of each entry, particulars (payee's name for debit items, "cash," "bills" or "sundries" for credit items), debit amounts, credit amounts, Dr. or Cr., and balance. After these columns there are rulings in connection with the interest—a column for the number of days to be allowed or charged on each balance extended, a column for the "decimals" on the debit balances and one for the "decimals" on the credit balances. A column is sometimes provided also for "decimals" upon cheques or notes paid to credit which are not cleared for two or three days after receipt. (See DECIMALS.) In some banks the interest is calculated at the time of posting and entered in interest columns.

A ledger keeper preserves a sharp look out upon the various items which come to his hands to be posted, and reports at once when any cheques will overdraw an account or cause it to exceed the sanctioned limit. The signatures upon cheques also come under his observation, and any suspected signature is reported immediately to the manager or chief clerk. A reference to the number of the signature in the signature book should be made at the heading of the account, so that the specimen signature may be found readily. (See SIGNATURE BOOK.)

The entries in the ledgers are posted in many banks from the credit slips and cheques, and the balance is usually extended, after all the items have been posted, so that there is only one balance shown on any one day.

Some ledgers are ruled with separate columns for the debit or credit balance, whilst others have only one column, the nature of the balance being indicated by "Dr." or "Cr." in front of it, or by credit and debit balances being written in different coloured inks. This last is found in practice to be a very convenient method.

Cheques are sometimes posted by the numbers instead of by the names of the payees.

The ledgers are called over daily (either the same day or first thing on the following morning) with the day books, or check ledgers, but a ledger-keeper does not, as a rule, call over the ledger which he has posted. In some banks the actual vouchers are also checked daily with the ledgers, and where this is done the ledger-keeper, when posting an account, makes a note upon the vouchers (or the first one if a quantity) of the folio of the account, so that the checker may readily find the place.

Current account ledgers are balanced at frequent intervals, so that any errors may be promptly, and without great trouble, discovered.

The number of ledgers varies, of course, with the number of accounts at a branch, and it is a common practice for a separate ledger to be kept for the principal accounts.

When an account is finally closed, it is the custom in some banks to paste the closing voucher into the ledger.

The above remarks apply to ledgers which are written up by hand.

"Entries made by a man in books which he keeps for his own private purposes, are not conclusive on him until he has made a communication on the subject of those entries to the opposite party." (*Simson* v. *Ingham* (1823), 2 B. & C. 65.)

CURRENT ACCOUNT REGISTER. A name sometimes given to the book in which are entered, either alphabetically or in columns corresponding to each current account ledger, all the cheques and current account credit slips which are posted into the current account ledgers each day. In some banks the book is called a check ledger, whilst in other banks the particulars are given in the day book. The entries are called over daily with the ledgers, to act as a check upon the postings.

CURTESY. The right of a husband to a life interest in the whole of the land belonging to his late wife in fee simple. It was abolished by the Administration of Estates Act, 1925. (See INTESTACY.)

CUSTODIAN TRUSTEE. By the Public Trustee Act, 1906, which came into operation on the first day of January, 1908, the office of Public Trustee was established.

The Public Trustee may, amongst other duties, if he thinks fit, act as custodian trustee, if appointed by order of the Court, or by the testator, settlor or other creator of a trust, or by the person having power to appoint new trustees.

Section 4 of the Public Trustee Act is as follows—

"(1) Subject to rules under this Act the Public Trustee may, if he consents to act as such, and whether or not the number of trustees has been reduced below the original number, be appointed to be custodian trustee of any trust—

"(*a*) by order of the Court made on the application of any person on whose application the Court may order the appointment of a new trustee; or

"(*b*) by the testator, settlor, or other creator of any trust; or

"(*c*) by the person having power to appoint new trustees.

"(2) Where the Public Trustee is appointed to be custodian trustee of any trust—

"(*a*) The trust property shall be transferred to the custodian trustee as if he were sole trustee, and for that purpose vesting orders may, where necessary, be made under the Trustee Act, 1893:

"(*b*) The management of the trust property and the exercise of any power of discretion exercisable by the trustees under the trust shall remain vested in the trustees other than the custodian trustee (which trustees are hereinafter referred to as the managing trustees):

"(*c*) As between the custodian trustee and the managing trustees, and subject and without prejudice to the rights of any other persons, the custodian trustee shall have the custody of all securities and documents of title relating to the trust

property, but the managing trustees shall have free access thereto and be entitled to take copies thereof or extracts therefrom:

"(*d*) The custodian trustee shall concur in and perform all acts necessary to enable the managing trustees to exercise their powers of management or any other power or discretion vested in them (including the power to pay money or securities into Court), unless the matter in which he is requested to concur is a breach of trust, or involves a personal liability upon him in respect of calls or otherwise, but, unless he so concurs, the custodian trustee shall not be liable for any act or default on the part of the managing trustees or any of them:

"(*e*) All sums payable to or out of the income or capital of the trust property shall be paid to or by the custodian trustee: Provided that the custodian trustee may allow the dividends and other income derived from the trust property to be paid to the managing trustees or to such person as they direct, or into such bank to the credit of such person as they may direct, and in such case shall be exonerated from seeing to the application thereof and shall not be answerable for any loss or misapplication thereof:

"(*f*) The power of appointing new trustees, when exercisable by the trustees, shall be exercisable by the managing trustees alone, but the custodian trustee shall have the same power of applying to the Court for the appointment of a new trustee as any other trustee:

"(*g*) In determining the number of trustees for the purposes of the Trustee Act, 1893, the custodian trustee shall not be reckoned as a trustee:

"(*h*) The custodian trustee, if he acts in good faith, shall not be liable for accepting as correct and acting upon the faith of any written statement by the managing trustees as to any birth, death, marriage, or other matter of pedigree or relationship, or other matter of fact, upon which the title to the trust property or any part thereof may depend, nor for acting upon any legal advice obtained by the managing trustees independently of the custodian trustee:

"(*i*) The Court may, on the application of either the custodian trustee, or any of the managing trustees, or of any beneficiary, and on proof to their satisfaction that it is the general wish of the beneficiaries, or that on other grounds it is expedient, to terminate the custodian trusteeship, make an order for that purpose, and the Court may thereupon make such vesting orders and give such directions as under the circumstances may seem to the Court to be necessary or expedient.

"(3) The provisions of this Section shall apply in like manner as to the Public Trustee to any banking or insurance company or other body corporate entitled by rules made under this Act to act as custodian trustee, with power for such company or body corporate to charge and retain or pay out of the trust property fees not exceeding the fees chargeable by the Public Trustee as custodian trustee."

With regard to corporate bodies acting as custodian trustees, Rule 30 of the Public Trustee Rules, as amended in 1926, is—

"30 (1) Any corporation constituted under the law of the United Kingdom or any part thereof and having a place of business there and empowered by its constitution to undertake trust business, and being either,

"(*a*) a company incorporated by special Act or Royal Charter,

(*b*) a company registered (whether with or without limited liability) under the Companies Act, 1929, having a capital (in stock or shares) for the time being issued of not less than £250,000, of which not less than £100,000 shall have been paid in cash, or

"(*c*) a company registered without limited liability under the Companies Act, 1929, whereof one of the members is a company within any of the classes hereinbefore defined,

"shall be entitled to act as a custodian trustee."

A trust corporation can act as custodian trustee and managing trustee without requiring another party to be associated with it as managing trustee. (*Forster and Another* v. *Williams Deacon's Bank, Ltd.*, 1934.)

The fees charged by the Public Trustee Office were revised in 1948. (See under PUBLIC TRUSTEE.) When the Public Trustee acts as custodian trustee, the capital fees on acceptance and withdrawal are reduced by one-half, but the ordinary rates of income fees apply. The investment fees are also reduced by one-half.

The Public Trustee, in his own capacity as custodian trustee or ordinary trustee, may employ, for the purposes of any trust, such bankers as he may consider necessary. He will, however, whenever practicable, take into consideration the wishes of the creator of the trust and any other trustees there may be, and of the beneficiaries. In such a case the position of the banker is merely that of the usual one with a customer. (See PUBLIC TRUSTEE, TRUSTEE.)

CUSTODY BILL OF LADING. (See BILL OF LADING.)

CUSTOMARY COURT. The court of the lord of the manor, for customary tenants or copyholders was abolished 1st January, 1926.

The court baron (*q.v.*) was the name of the freeholders' court.

CUSTOMARY FREEHOLDS. These were converted into absolute freeholds as from 1st January, 1926, on the same principle as the enfranchisement of copyholds. Customary freeholds were akin to copyholds, except that the tenant's disposition of the land was not subject to the will of the lord of the manor.

CUSTOMER. There is no statutory definition of a customer from a banking point of view. It has been held that in order to make a person a customer of a bank, within the meaning of Section 82 of the Bills of Exchange Act, 1882, there must be either a deposit or a current account or some similar relation. (*Great Western Railway* v. *London and County Banking Co.*, [1901] A.C. 414.)

The word "customer" in Section 82 includes another bank. (See case under ACCOUNT PAYEE.)

See the case of *Hampstead Guardians* v. *Barclays Bank, Ltd.*, under CURRENT ACCOUNT, where it was held that the fact that there was a flaw in the chain of identification of the customer ought to have put the bank on inquiry and that the bank was not protected by Section 82.

In *Ladbroke & Co.* v. *Todd* (1914), 111 L.T. 43, Bailhache, J., said that he was of opinion that the relation of banker and customer begins as soon as a cheque or money is paid in, and the bank accepts it and is prepared to open an account.

In the case of *Commissioners of Taxation* v. *English, Scottish, and Australian Bank, Ltd.* (1920), 36 T.L.R. 305, which came before the Judicial Committee of the Privy Council, T opened an account with the bank, paying in cash £20; next day he paid in a crossed cheque payable to 053 or bearer (the cheque was subsequently discovered to have been stolen by someone from a letter box) and the following day cheques withdrawing the money were paid. The point was raised as to whether T was a customer within the meaning of the Section. (See Section 82, above.) It was held that "the word 'customer' signifies a relationship in which duration is not of the essence. A person whose money has been accepted by the bank on the footing that they undertake to honour cheques up to the amount standing to his credit is a customer of the bank in the sense of the statute, irrespective of whether his connection is of short or long duration. T was therefore a customer, though one of short standing." It was further held that the bank had acted without negligence in collecting the cheque. (See remarks on this point under COLLECTING BANKER.)

Money paid in by a customer to his account is really lent to the banker, the banker becoming, not the trustee for that money, but the debtor of the customer. In the event of the banker's failure, the customer claims upon the estate as an ordinary

creditor. The Lord Chancellor said, in *London Joint Stock Bank, Ltd.* v. *Macmillan and Arthur*, [1918] A.C. 777, "the relation between banker and customer is that of debtor and creditor, with a superadded obligation on the part of the banker to honour the customer's cheques if the account is in credit." (See CURRENT ACCOUNT.)

CUSTOMS AND EXCISE ACCOUNT. The persons entitled to draw upon such account are those who are notified to the banker by the Commissioners of Customs and Excise.

The account is subject to the conditions prescribed in Section 18 of the Exchequer and Audit Departments Act, 1866 (29 & 30 Vict. c. 39). (See PUBLIC ACCOUNT.)

Cheques on the account, or drafts given by the banker to transmit money from the account to another public account, are exempt from stamp duty. (See Schedule to Stamp Act, 1891, under article BILL OF EXCHANGE.)

CY PRÈS. As nearly as possible. When the terms of a trust are incapable of being carried out absolutely, the Courts have power to order that they be carried out "*cy près*," as nearly as possible.

DATE. The Bills of Exchange Act, 1882, provides—

"Section 3. (4) A bill is not invalid by reason—

"(*a*) That it is not dated."

"Section 12. Where a bill expressed to be payable at a fixed period after date is issued undated, or where the acceptance of a bill payable at a fixed period after sight is undated, any holder may insert therein the true date of issue or acceptance, and the bill shall be payable accordingly.

"Provided that (1) where the holder in good faith and by mistake inserts a wrong date, and (2) in every case where a wrong date is inserted, if the bill subsequently comes into the hands of a holder in due course the bill shall not be avoided thereby, but shall operate and be payable as if the date so inserted had been the true date."

The above Section applies only to time bills, but with regard to cheques where the date has been omitted it is generally considered that a holder may insert what he takes to be the true date. (See Section 20 under INCHOATE INSTRUMENT.)

"Section 13. (1) Where a bill or an acceptance or any indorsement on a bill is dated, the date shall, unless the contrary be proved, be deemed to be the true date of the drawing, acceptance, or indorsement, as the case may be.

"(2) A bill is not invalid by reason only that it is ante-dated or post-dated, or that it bears date on a Sunday."

Ante-dating is placing a date prior to the true date; post-dating, placing a date subsequent to the true date. A cheque with a Sunday date should not be paid till after the Sunday.

The difference between the insertion of an omitted date and the alteration of a date should be noted. The above Section permits any holder to insert a date, but Section 64 (see under ALTERATIONS) requires all parties to agree to an alteration.

The date is a material part of a bill and any alteration in a date, unless with the assent of all the parties liable on the bill, avoids the bill except as against the party who has made or assented to the alteration, and subsequent indorsers; but where a date has been altered and the alteration is not apparent, a holder in due course may avail himself of the bill as if it had not been altered.

A bill bearing a date prior to the date upon the stamp is not invalid, as the above Section (13) permits a bill to be ante-dated.

A cheque dated, say, 31st June, may be paid on or after 30th June.

Where a post-dated bill is discounted, and the acceptor dies or becomes bankrupt before the arrival of the date of the bill, the bill is not invalid by reason only that it is post-dated.

It is not permissible to give a bill or promissory note, undated, for say three months, and after payment of the bill or note, still undated, to issue it again for another three months, and so on. The only date which can be inserted in an undated bill is the true date of issue. A fresh debt requires a new bill or note.

The dates on bills of exchange and cheques are usually in figures, but they would be quite valid if written in words. In France the date on a cheque is written in words. On transfers, powers of attorney, conveyances, and other important instruments, the date should be in words. (See ANTE-DATED, BILL OF EXCHANGE, POST-DATED.)

A deed takes effect from the date of its delivery. "It is not necessarily an essential part of a deed, that there should be a date upon it. The date of the execution can be proved. An undated deed that has been executed and has been delivered to a person in whose favour it is intended to operate is perfectly complete, without there being any date." (Sargant, J., in *Esberger & Son, Ltd.* v. *Capital & Counties Bank, Ltd.* (1913), 109 L.T. 140.)

A bill of exchange is incomplete and revocable until delivery of the instrument in order to give effect thereto. (See DELIVERY OF BILL.)

DAY BOOK. It is called in some banks the cash book, or state book. At a small branch one book suffices, and it contains a record of all the day's transactions. The entries on the received side, plus the balance brought forward from yesterday, balance with the entries on the paid side and the balance of cash on hand at the close of to-day.

In a large branch there may be subsidiary day books for current accounts, as may be found necessary, for transfer items, etc., and the totals of these books are brought into a daily summary book.

Where the number of current accounts is large, it is found very convenient to balance each current account ledger by itself (see BALANCE BOOK), and it is in the day book that all the current account items are separated to the ledgers where they belong;

thus there may be a column for ledger A to C, another for ledger D to G, and so on.

The day book is an important book and requires to be carefully kept, and, as with other bank books, no erasures are permitted to take place. Any alteration is effected by ruling out the wrong figures and inserting the correct ones.

The entries in the day book are called over daily with the current account, and other ledgers, and this is done, in most banks, by clerks other than those who write up the day books or post the ledgers. Some banks, in addition to calling over the day books, find it a useful plan also to check the actual vouchers with the current account ledgers. In a small branch the calling over may easily be done by the manager himself, who thereby gains information which he might not otherwise obtain. In a large branch a manager might with advantage occasionally call over one of the ledgers himself.

Check ledgers which are in use in some banks are practically of the same nature as day books in other banks. (See CHECK LEDGER.)

The above remarks apply principally to books which are written up by hand.

DAYS OF GRACE. Where a bill of exchange is not payable on demand, three days, called "days of grace," are allowed. Originally they would be allowed to an acceptor as a matter of grace; they are now, however, claimed by an acceptor as a matter of right and are fixed by law. The Bills of Exchange Act, 1882, provides—

"Section 14. Where a bill is not payable on demand, the day on which it falls due is determined as follows—

"(1) Three days, called days of grace, are, in every case where the bill itself does not otherwise provide, added to the time of payment as fixed by the bill, and the bill is due and payable on the last day of grace: Provided that—

"(*a*) When the last day of grace falls on Sunday, Christmas Day, Good Friday, or a day appointed by royal proclamation as a public fast or thanksgiving day, the bill is, except in the case hereinafter provided for, due and payable on the preceding business day;

"(*b*) When the last day of grace is a bank holiday (other than Christmas Day or Good Friday) under the Bank Holidays Act, 1871, and Acts amending or extending it, or when the last day of grace is a Sunday and the second day of grace is a bank holiday, the bill is due and payable on the succeeding business day."

Thus a bill due February 1, when the three days are added, is actually payable on February 4.

The days of grace are added even if the bill is payable only at one, two or three days after date or sight.

If a bill is specially drawn as payable without days of grace, or as payable on a certain day fixed, e.g. "on February 1 fixed," no days of grace are allowed. A bill payable "at sight," "on presentation," or "on demand," does not take days of grace, but a bill payable "after sight" or "after date" does take the three days.

Bills drawn by the Bank of England upon itself do not take days of grace, but that exception does not apply in the case of any other bill drawn upon the Bank of England.

Days of grace are not allowed upon a cheque. Days of grace on a promissory note are the same as in the case of a bill.

If a bill or promissory note is payable by instalments, the three days are allowed upon each instalment. In *Schaverien* v. *Morris* (1921), 37 T.L.R. 366, where a promissory note, repayable by instalments, provided that if any instalment should not be paid "punctually," the whole of the balance was immediately to become payable, it was held that the use of the word "punctually" does not deprive the maker of the note of the three days of grace allowed by Section 14. (See above.)

A foreign bill domiciled in this country takes the three days of grace, but a bill drawn in England and domiciled abroad is payable according to the laws of the country where it is payable.

Days of grace have been abolished all over the Continent and in almost all the States of the United States. England and its colonies are practically the only countries where days of grace are allowed. (See UNIFORM LAW.)

If a person risks taking a bill which has been accepted contrary to the tenor of the bill, it should be presented on the day appointed by the acceptance, without days of

grace. Opinions appear to differ as to whether days of grace can be claimed. If, however, days of grace are claimed by the acceptor, the bill should be formally noted, the usual notice given to all parties, and the bill presented again in three days' time.

An instrument which is drawn payable at a certain period after the arrival of a ship does not take days of grace, because the document is not a bill according to the meaning of the Bills of Exchange Act. Where a bill is payable after a specified event it must be an event which is certain to happen. The death of a person is a certain event, but the arrival of a ship is not. (See BILL OF EXCHANGE, FIRE INSURANCE, LIFE POLICY, PAYMENT OF BILL.)

Examples of the dates upon which bills, drawn at various currencies, are due, are given under TIME OF PAYMENT OF BILL.

Insurance companies allow a number of days of grace within which premiums due upon policies may be paid, usually fifteen days for fire insurance, and thirty days for life assurance. The due date of a premium is the date specified in the body of the policy, and not the last day of grace; thus differing from a bill of exchange which is, as stated above, due on the last day of grace. (See LIFE POLICY.)

DEAD ACCOUNT. Where operations upon an account have ceased, the account is said to have become dead. An overdrawn account, which has hitherto been of an active nature, suddenly becoming inoperative will warn a banker to give it his particular attention. A cessation of transactions may mean that the customer has opened an account with another bank.

The Court of Appeal has held that express demand by a customer for repayment of a current account is a condition precedent to the right to sue the banker for the amount, and that for the future bankers may have to face legal claims for balances which have remained dormant for more than six years. (*Swiss Bank Corporation* v. *Joachimson* (1921), 37 T.L.R. 534.) No banker, however, would think of withholding money from a customer who is able to establish his identity and title, however long the account may have lain inoperative in his books. (See DORMANT BALANCES.)

DEAD LOAN. A permanent loan, as distinguished from one which is only for a short period. A temporary advance may develop into a dead loan, if the borrower should prove to be unable to repay it at the specified time.

A prudent banker endeavours to avoid having his money locked up in dead loans, as such loans are contrary to the principles of sound banking. Where interest is added half-yearly, and not paid, it will, of course, gradually diminish any margin between the amount of the loan and the estimated realisable value of the security, and a point may be reached when a banker will not be justified in passing such interest to his profit and loss account. The interest should be placed, pending developments, to a suspense or reserved interest account.

DEAD RENT. In a mining lease there may often be found mention of two rents, the dead rent—that is, a fixed minimum rent —and a royalty rent—that is, a certain percentage of the profits from the mine. The dead rent is payable whether the mine is worked or not.

DEAD SECURITY. An inconvertible security. Mines, mills, iron-works, and such-like properties, whatever their values may be as going concerns, become, usually, of very small value when they cease to work. They are well termed a dead security.

DEAD STOCK. The item "dead stock" on the assets side of the balance sheet of the Imperial Bank of India describes what would in an ordinary balance sheet be grouped under "Premises, office furniture, etc."

DEAD WEIGHT. When the cargo of a vessel is of a heavy nature, the dead weight is the weight of such cargo which brings the ship down to the Plimsoll mark, that is, a mark on each side of a ship which indicates the maximum load-line as approved by the Board of Trade. A cargo of a light nature might fill the ship but not bring it down to the Plimsoll mark.

DEALER (STOCK EXCHANGE). The stock jobber on the Stock Exchange who deals in stocks and shares is called a "dealer." By the Finance Act, 1920, Section 42, a reduced stamp duty is allowed on transfers where stock is transferred on sale to a dealer. (See under CONVEYANCE.) A "dealer" is defined by the Act as a person who, being a member of a stock exchange in the United Kingdom, does not deal by way of business otherwise than with or through other members of that stock exchange or otherwise than as a principal, and does not carry on the business of a broker or agent. (See STOCK JOBBER.)

DEAR MONEY. Money is said to be "dear" when, owing to the supply being scarce, it can be borrowed only at a high rate of interest.

Money is "cheap" when it can be borrowed at a low rate.

DEATH DUTIES. (See ESTATE DUTY.)

DEATH OF ACCEPTOR. Where an acceptor is dead and no place of payment is specified, presentment (of a bill) must be made to a personal representative, if such there be, and with the exercise of reasonable diligence he can be found. If he cannot be found it should be presented at the house of the deceased.

The death of the acceptor cancels a banker's authority to pay a bill accepted by him, and any bill falling due after his death must be returned with answer "acceptor dead."

"A banker's authority to pay acceptances is revoked by his customer's death, but if, without notice of such death, he pays an acceptance, he can claim against the customer's estate for the amount, or, it would seem, reimburse himself out of the funds of the customer in his hands. (*Rogerson* v. *Ladbrooke* (1822), 1 Bing. 93.)" Grant's *Law of Banking*.

DEATH OF ADMINISTRATOR. On the death of an administrator the surviving administrator, if any, acts, but, on the death of the only or last one, fresh letters of administration require to be taken out, and a new account should be opened by the new administrator. (See ADMINISTRATOR DE BONIS NON.)

DEATH OF AGENT. Where a cheque is signed by an agent or a person in an official capacity, payment should not be refused merely because the agent or official has died since the cheque was issued. For example, if Jones has authority to draw cheques upon Brown's account, a cheque so drawn should be paid, although Jones may have died before its presentation. Cheques signed by a secretary, treasurer, director, manager or other person signing in an official capacity must also be paid, irrespective of the death of the official before presentation.

DEATH OF CUSTOMER. A banker may receive formal notice of a customer's death, but it is sufficient notice of the death if he sees an announcement in the papers or hears of it from a reliable source. A mere rumour that his customer John Brown is supposed to be dead is not sufficient to warrant a banker returning a bill or cheque unpaid, though a banker in that case would usually take steps to confirm or disprove the rumour.

After notice of death, no further debits should be passed to the account, except where a banker has, prior to the death, made himself responsible, e.g. by marking a cheque for payment at the request of the drawer, or another bank, or by making a purchase of stock or shares according to the customer's order.

If the deceased customer leaves a will appointing executors, the executors can, after probate has been obtained and exhibited to the banker, deal with the account and securities of the deceased, subject to any claims by the banker.

Where there is no executor by reason of intestacy or otherwise, letters of administration must be obtained, and, after exhibition thereof to the banker, the administrators can act in the same way as executors. If the estate is a very small one, bankers sometimes pay the small balance in their hands, without letters of administration, on receiving a satisfactory indemnity. There is no duty payable on an estate which does not exceed £3,000. An indemnity may take the following form—

"In consideration of your paying, without production of letters of administration, to us the undersigned at our request the sum of being the balance standing to the credit of the late of we hereby undertake and agree to, at all times hereafter, indemnify you and your successors, estate and effects from and against all actions, costs, damages, claims and demands whatsoever, and by whomsoever brought claimed or made, for or on account of your having paid the sum of as mentioned above, or in anywise relating thereto.

Witness ."

6d. Stamp

Particulars of the probate, or the letters of administration, should be entered by the banker in the Probate Register (*q.v.*).

After exhibition of probate or letters of administration, any credit balance of the deceased is usually transferred to a new account, and it is advisable that the transfer be made by cheque or by a letter of authority signed by the representatives. The new account is commonly entitled "Executors of John Brown { John Jones, Robert Smith."

or "Administrators of John Brown," as the case may be.

Any accommodation upon the deceased's account forms the subject of arrangement between the banker and the representatives,

and until an arrangement is made the balance remains standing in the deceased's name.

DEATH OF DRAWEE. Where the drawee of a bill is dead presentment may be made to his personal representative, although presentment is excused and the bill may be treated as dishonoured by non-acceptance. (Bills of Exchange Act, 1882, Section 41 (1) (*c*) and (2) (*a*).)

DEATH OF DRAWER. The authority of a banker to pay a cheque drawn on him by his customer is determined by notice of the customer's death (Section 75, Bills of Exchange Act, 1882). All cheques received after notice of his death must be returned with answer "Drawer dead," except in the case of a cheque which has been "marked" for payment by a banker at the request of the drawer, or for the banker's own convenience in connection with the local clearing. Such a cheque may be paid when presented, even though the drawer has died since the cheque was marked, as the "marking" was, to all intents and purposes, a payment of the cheque. (See MARKED CHEQUE.) Where a customer dies before settlement of a purchase of stock or shares effected by the banker on the customer's instructions, the account may be debited with the cost.

The notice of death does not affect any cheques which may have been debited to the deceased's account after his death, but prior to the time when the banker first heard of it. If a cheque is received in the morning's clearing and, before it is actually debited to the drawer's account, notice of his death is received, the cheque should be returned.

A record of the death should be made in the current account ledger.

Before any transfer of the credit balance of the deceased's account can take place, probate or letters of administration must be exhibited.

Any cheques signed by the deceased in an official capacity, as treasurer, secretary, agent, director, etc., are not affected by his death.

If he has signed a cheque along with others on a joint credit account, the cheque would be paid, but if he signed alone upon the joint account it should not be paid. If the joint account is overdrawn, or the payment of the cheque would overdraw it, the banker should not pay it (if signed by the deceased with another of the joint holders), unless arrangements were made with the other drawer. On a joint account, only the survivors are responsible for any overdraft. (See DEATH OF JOINT CUSTOMER.)

Where the drawer of a bill is dead, and a party requiring to give notice of dishonour knows of it, the notice must be given to a personal representative if such there be, and with the exercise of reasonable diligence he can be found.

The death of A B, who has given C D a mandate to sign on his account, cancels the mandate, and the banker will, after receipt of notice of A B's death, return all cheques signed by C D under the mandate, with answer "A B deceased" or "customer deceased."

DEATH OF EXECUTOR. Upon the death of one executor cheques are signed by the surviving executor, if there is one. If the last executor is dead, his duties are undertaken by his executors, unless there is some special provision in the will. In the event of the last executor dying intestate, letters of administration for the estate for which the deceased was executor must be taken out, and when the letters have been exhibited, the balance, if credit, should be transferred by cheque to a new account. (See ADMINISTRATOR DE BONIS NON.)

If, when probate was granted, power was reserved to another person to prove, the executors of the last surviving acting executor should not act unless the person to whom power was reserved is dead or has renounced probate.

When a cheque is signed by two, or more, executors, the death of one of them does not affect the payment of the cheque when presented, unless the account is overdrawn and the executors are personally liable.

By the Administration of Estates Act, 1925, an executor of a sole or last surviving executor of a testator is the executor of that testator. So long as the chain of such representation is unbroken, the last executor in the chain is the executor of every preceding testator. The chain is broken by an intestacy, or failure of a testator to appoint an executor, or failure to obtain probate of a will. (Section 7.)

DEATH OF GUARANTOR. On receipt of notice of the death of a guarantor (whether sole guarantor or one of several) the banker will, if he is relying upon that surety (unless the guarantee provides that it shall not be determined by death), at once stop the account and open a fresh one for all further transactions. If the guarantee was to secure the customer's general indebtedness, all the customer's accounts, if he has more than one account, should be broken, credit as well as debit. (See the case of *Bradford Old Bank* v. *Sutcliffe* under BROKEN

ACCOUNT.) This prevents the payments to credit from extinguishing the guarantor's liability. If the account is not stopped, all fresh debits will be unsecured. The new account, in the absence of a fresh arrangement, should, of course, be kept in credit. The personal representatives of the deceased guarantor should be advised of the position and of the terms under which the guarantee can be determined, if notice is required. (See GUARANTEE.)

DEATH OF HOLDER. Upon the death of the holder of a bill or cheque, all his rights are transmitted by law to his executor or administrator, and the executor or administrator can sue upon the bill, or cheque, and negotiate it in the same way that the holder himself could have done.

When an executor, or an administrator, indorses a bill or cheque, he should state the capacity in which he signs, otherwise he may render himself personally liable.

An indorsement by an executor or administrator should be confirmed by his banker.

If a cheque is payable to two persons and one of them dies, the cheque is payable to the surviving holder, after satisfactory evidence has been produced of the death of the other.

DEATH OF INDORSER. Where an indorser is dead and the party requiring to give notice of dishonour knows of it, the notice must be given to a personal represenative, if he can be found.

DEATH OF INFANT. (See DEATH OF MINOR.)

DEATH OF INSOLVENT PERSON. By the Administration of Estates Act, 1925, where the estate of a deceased person is insolvent, his real and personal estate shall be administered in accordance with the following rules as to payment of debts—

"(1) The funeral, testamentary, and administration expenses have priority.

"(2) Subject as aforesaid, the same rules shall prevail and be observed as to the respective rights of secured and unsecured creditors and as to debts and liabilities provable, and as to the valuation of annuities and future and contingent liabilities respectively, and as to the priorities of debts and liabilities as may be in force for the time being under the law of bankruptcy with respect to the assets of persons adjudged bankrupt." (Section 34 (1), and Rules in Part 1 of First Schedule.)

DEATH OF JOINT CUSTOMER. Where an account is opened in the names of John Brown and John Jones, and Brown dies, Jones may withdraw the balance, but the banker, of course, would require definite proof of Brown's death, e.g. death certificate.

This procedure is justified by the law relating to joint debts, which enables the survivor of two joint creditors to give a discharge for any balance due. It is customary in a mandate for a joint account to find a clause that the account is "with benefit to survivor." This is not so much an agreement between the parties as an admission that this is the law on the subject. There is an exception to this general rule, however, in the case of husband and wife.

Where an account is in the joint names of a husband and wife, when the wife dies the balance may be withdrawn by the husband. If the husband dies first, the wife has power to draw a cheque for the balance, if it was the husband's intention that the money should be hers at his death. But if that was not the husband's intention, there appears to be some doubt as to whether the wife may draw the balance. In a case (*Marshal* v. *Crutwell* (1875), L.R. 20 Eq. 328) where the husband transferred his account into the names of himself and wife, with authority for either to sign cheques thereon, Sir George Jessel said—"I think the circumstances show that this was a mere arrangement for convenience, and that it was not intended to be a provision for the wife in the event which might happen, that at the husband's death there might be a fund standing to the credit of the banking account. . . . I come to the conclusion that it was not intended to be a provision for the wife, but simply a mode of conveniently managing the testator's affairs, and that it leaves the money, therefore, still his property." To prevent any question arising at the death of the husband, a banker should always have a clear arrangement made with the customers when such accounts are opened, as to whether or not the balance is to belong to the survivor.

If the personal representatives of a deceased joint account-holder make claim to the balance, they will usually be informed that their remedy against the banker paying away the balance to the survivor(s) is by way of injunction. If an action were threatened, the banker would interplead.

Where both, or all, the joint holders are dead, the balance is repayable to the legal representatives of the one who died last. A cheque on a joint account drawn by one of the parties, under authority, prior to his

death, should not be paid, if notice of death has been received. But if a cheque is signed by all the joint parties, and one has died, the cheque may be paid, as the money belongs to the survivors.

A mandate is terminated by the death of the person, or one of the persons, who gave it, and cheques drawn thereunder and presented after notice of the death should not be paid.

In the case of a joint account which is overdrawn, the estate of the deceased is not, in an ordinary way, legally liable for the debt. It has been held that, where a cheque was signed by the three parties to a joint account and one of them died, the survivors only were liable and not the estate of the deceased. Heber Hart, in *The Law of Banking*, says that where there is no partnership, but a joint liability is incurred by borrowers (as distinguished from a joint and several liability) upon the death of one, his estate will not be liable. In *Bankers' Advances* by F. R. Stead, Sir John Paget says that although, on the death of one joint debtor, "the deceased's estate is released at law, it may be reached by administration proceedings in equity." The usual form of mandate taken on the opening of a joint account provides for joint and several liability, and provided a debit account is broken the estate of the deceased joint account-holder will be liable.

With respect to articles which are left for safe custody in joint names, upon the death of one of the depositors, the articles should not be given up except on the signature of the survivor and of the executor, or administrator of the deceased unless otherwise provided for in the form of mandate. (See JOINT ACCOUNT, SET OFF.)

DEATH OF JOINT DEPOSITOR. (See DEATH OF JOINT CUSTOMER.)

DEATH OF JOINT SHAREHOLDER. Upon the death of one, the survivor becomes sole owner. Proof of death is required.

DEATH OF JOINT TENANT. The interest of a deceased person under a joint tenancy where another tenant survives the deceased is an interest ceasing on his death. (Administration of Estates Act, 1925, Section 3, s.s. 4.)

DEATH OF MANDANT OR MANDATOR. A mandate is terminated by the death of the mandant, or person who gave it.

DEATH OF MANDATORY. A mandate is terminated by the death of the mandatory, or person in whose favour it was given; that is, the mandate does not apply to the executors of the deceased.

DEATH OF MINOR. Letters of administration require to be taken out. But occasionally a banker may agree to pay a small balance upon receiving a satisfactory indemnity.

An infant cannot make a will.

A soldier, sailor, or airman who is under 21 years of age can make a valid will whilst on service. It can be verbal if made in the presence of witnesses or, if written, it need not be witnessed.

DEATH OF OFFICIAL. Where a person signs a cheque in an official capacity as treasurer, secretary, director, etc., either by himself or with others, his death does not preclude the banker from paying such a cheque when presented after his death.

Where cheques have been signed by a treasurer or secretary alone, e.g. Warwick Flower Show, John Brown, Treasurer, a fresh official must be duly appointed and notice given to the bank, before any further cheques can be drawn upon the account. Executors do not act for a deceased in his official appointments.

DEATH OF PARTNER. Subject to any agreement between the partners, every partnership is dissolved as regards all the partners by the death of any partner. (See Section 33, Partnership Act, 1890, under PARTNERSHIPS.) The death of a limited partner does not dissolve the partnership.

The estate of a partner who dies is not liable for partnership debts contracted after the date of the death. (Section 36.)

If the firm's account is overdrawn and the banker desires to retain his claim against the estate of the deceased partner, or if securities belonging to the deceased partner are held for the firm's account, the account should be stopped and a new one opened for future transactions, otherwise, according to the rule in *Clayton's* case (*q.v.*), all sums paid to credit will release the deceased's estate to the amount of such credits, and all debits will form a fresh debt against the new partnership. This rule commences to apply from the actual date of death, even though the banker is quite unaware that the death has taken place. In such a case the banker should, as soon as he knows of the death, if transactions have taken place since that date, alter the account as from the date of death so as to avoid the operation of the rule unless the pass book has already been written up and delivered to the customers. In *Simson* v. *Ingham* (1823), 2 B & C. 65, Bayley, J., said, "Entries made by a man in books which he keeps for his own private

purposes, are not conclusive on him until he has made a communication on the subject of those entries to the opposite party." Where there is no question of security belonging to the deceased partner the account may be continued unbroken. If it is apparent that the survivors are continuing the business, i.e. that a new firm is created, inquiries should in due course be made as to the proposals for discharging the claims of the dead partner's estate. By Section 43 of the Partnership Act the amount due from surviving or continuing partners to the representatives of a deceased partner in respect of the deceased partner's share is a debt accruing at the date of the death. It is not uncommon to find provision in the Articles of Partnership for the deceased partner's interest to remain as a loan in the firm.

On the death of a partner, it has been held (*In re Bourne, Bourne* v. *Bourne*, [1906] 1 Ch. 113) that the surviving partner may mortgage the landed property belonging to the partnership, and the mortgagee may sustain his claim against the personal representatives of the deceased partner, unless he had notice that the money advanced was for an improper purpose. It is the duty of a surviving partner to realise the assets for the purpose of winding up the partnership affairs, and the banker was entitled, in the absence of evidence showing the contrary, to treat the account as continued by the surviving partner for this purpose. The bank's security in this case was held to take priority over the claim of the executor of the deceased partner for his share in the partnership. The banker could not have claimed that his charge was valid if it could have been shown that he knew that the surviving partner was carrying on the business on his own behalf. (See Section 38, Partnership Act, 1890, under PARTNERSHIPS.)

On the death of a partner, the account should also be broken where a guarantee is held from a third party, until fresh arrangements are made with the firm and with the guarantor, unless the guarantee specially provides that it shall not be affected by any change in the partnership. (See Section 18, Partnership Act, 1890, under PARTNERSHIPS.)

If the firm's account is in credit, the banker need not break the account, though the surviving partners may, for their own convenience, desire to open a new account. When that is done and the balance has to be transferred, it should be drawn by cheque. Usually, however, the old account is simply continued with the name of the deceased partner dropped out of the ledger heading, the date of his death being noted against his name. The surviving partners have power to deal with any balance on the partnership account.

Cheques signed by a partner on the firm's account, and not presented for payment till after his death, should be paid, unless the account is overdrawn and his estate is to be held liable, in which case the cheques should be returned "partner dead." The continuing partners may, however, give the banker written authority to charge any outstanding cheques to their new account. (See PARTNERSHIPS.)

DEATH OF PAYEE. (See DEATH OF HOLDER.)

DEATH OF PRINCIPAL. The death of a principal cancels any authority or power he may have given to an agent. For example, if Brown gave Jones power to draw cheques upon his account, the death of Brown would cancel that authority.

DEATH OF SHAREHOLDER. An executor is not personally liable upon the shares of the deceased, merely because he receives the dividends thereon, or is noted in the register as the executor of the deceased. If, however, the shares are transferred into the executor's name, he is liable for any calls there may be, though if he has become registered on behalf of the deceased's estate he may look to the estate to refund any payment. An executor is entitled to receive the dividends without the shares being transferred into his name. Many companies require administrators or executors to transfer the shares of the deceased shareholder into their own names, unless they intend to sell the shares at an early date.

By Section 76, Companies Act, 1948, "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."

Upon production of probate or letters of administration to a company, the certificate is indorsed with the names of the personal representatives. When personal representatives are registered as members, a new certificate is issued. (See TRANSMISSION OF SHARES.)

DEATH OF SURETY. Where title-deeds, or certificates, or other securities, are deposited with a banker by one person to

secure an overdraft to another person, upon the death of the party giving the security, the account of the debtor should be stopped and arrangements made for a new account to be opened for future transactions. If this is not done, all credits to the account will release the security to the extent of the amounts paid in, and all fresh debits will be unsecured. The new account should, of course, be kept in credit till a fresh arrangement is made. If shares have been transferred to the banker and registered in his name, the same remarks apply, because the transfer was given merely as a security.

DEATH OF A TRUSTEE. Section 18 of the Trustee Act, 1925, provides—

"(1) Where a power of trust is given to or imposed on two or more trustees jointly, the same may be exercised or performed by the survivor or survivors of them for the time being.

"(2) Until the appointment of new trustees, the personal representatives or representative for the time being of a sole trustee, or, where there were two or more trustees of the last surviving or continuing trustee, shall be capable of exercising or performing any power or trust which was given to, or capable of being exercised by, the sole or last surviving or continuing trustee, or other the trustees or trustee for the time being of the trust.

"(3) This Section takes effect subject to the restrictions imposed in regard to receipts by a sole trustee, not being a trust corporation." (See under TRUSTEE.)

The above powers apply if and so far only as a contrary intention is not expressed in the instrument, if any, creating the trust. (Section 29 (2).)

DEBENTURE. (Latin *debeo*, I owe.) A debenture is an acknowledgment of indebtedness. It is usually given by an incorporated company, but may be given by anyone. It is usually given under seal, but can be given under hand. There is no statutory definition of a debenture in the Companies Act or anywhere else. A debenture is usually accompanied by a charge on the assets of the borrower (a mortgage debenture), but it may be a simple acknowledgment of a debt, in which case it is called a "naked" debenture—rarely, if ever, met with in practice.

Debentures usually bear a specified rate of interest which is payable whether the company makes profits or not; sometimes income debentures are issued which stipulate that interest is only payable out of profits. Sometimes guaranteed debentures are issued wherein the payment of interest is guaranteed by another company.

Debentures are usually expressed to be transferable free from equities, that is, the company cannot as against a holder set off any debt due to it by the transferor; unless transfer free from equities is acknowledged in the instrument, the debenture is subject to equities, i.e. subject to any claim that the company may have against the transferor.

Debentures may be payable to bearer or may be in registered form and then the mode of transfer is specified in the instrument. Bearer debentures are recognised by the Courts as being negotiable instruments transferable by delivery. (*Bechuanaland Exploration Co.* v. *London Trading Bank*, [1898] 2 Q.B. 658: *Edelstein* v. *Schuler & Co.*, [1902] 2 K.B. 145.)

Debentures may be issued at a discount or at a premium or at par. This, together with the rate of interest offered, is an index of the company's credit. Sometimes, where a fixed charge is given on the company's assets, a trust deed is executed by the company whereby such specific assets are held by designated trustees in trust for the debenture holders.

Debentures may be issued for one lump sum or in a series of, say, £100 each, in which each one of the series is expressed to rank *pari passu* with the others.

Debenture stock differs from debentures in that it is transferable in odd amounts and not in round sums. Usually the assets hypothecated to the service of debenture stock are the subject of a trust deed in favour of the stockholders.

Debentures may be redeemable at a stipulated time or after a certain period of notice, and it should be noted whether the company is under an obligation to redeem at the appointed time or whether it has merely the option to redeem.

Debentures may be perpetual or irredeemable, that is to say there is no date at which they are repayable, and unless the company defaults, the holder has no rights as regards principal against the company.

Mortgage debentures require stamp duty at the rate of 5s. per cent.

Debentures containing a charge on the company's assets require to be delivered for registration with the Registrar of Companies

at Bush House within twenty-one days of their creation. Where a series of debentures containing or giving by reference to any other instrument any charge to the benefit of the debenture holders is created by a company, the required particulars must be delivered to the Registrar within twenty-one days after the execution of the deed containing the charge, together with the deed, or if there is no such deed, one of the debentures. The Registrar shall give a certificate of the registration of any such charge and the Company must indorse a copy thereof on every debenture or certificate of debenture stock. (Companies Act, 1948, Section 95.)

In addition, a company must enter a debenture containing a charge on its own register of charges. (Section 103.)

A debenture issued by an Industrial and Provident Society giving a charge on chattels, etc., requires registration as a bill of sale. (*In re North Wales Produce & Supply Society, Ltd.*, [1922] 2 Ch. 340.)

By Section 87 the company's own register of holders of debentures shall be open to the inspection of any debenture holder or shareholder of the company without fee and such holder may require a copy, or part of a copy, of the register on payment of sixpence per hundred words required.

Where a debenture gives a fixed charge, the company, like any other mortgagor, cannot deal with the assets so charged and subsequent lenders cannot jeopardise the debenture holders' security. But where a floating charge is given, the company is at liberty to deal with the assets so covered as it pleases; indeed this is one of the advantages attaching to an incorporated company that it can charge its chattels and book debts without the necessity of a bill of sale or assignment. Likewise the company can create fixed charges subsequently, to take priority over the floating charge.

But usually a debenture giving a floating charge contains a proviso such as this: "The debentures of the said series are all to rank *pari passu* as a first charge on the property hereby charged without any preference or priority over one another and such charge is to be a floating security, but so that the company is not to be at liberty to create any mortgage or charge on its undertaking *pari passu* with or in priority to the said debentures." If a lender subsequently obtains a charge on a specific asset and has notice of such a condition his charge will be postponed to the floating charge, but without notice he will get priority. To ensure that such a floating charge will not be jeopardised in such a manner, it is desirable to include in the particulars of the floating charge registered at Bush House the clause above referred to; this registration will then be notice to all the world.

As to the invalidity of a floating charge given within twelve months of a company's liquidation see FLOATING CHARGE.

By Section 90 of the Companies Act, 1948, a company may re-issue redeemed debentures unless any provision to the contrary is contained in the Articles or other contract or unless the company has, by passing a resolution to that effect or by some other act, manifested its intention that the debentures shall be cancelled. On such a re-issue the holder will get the priorities that originally attached to the debentures. Particulars of debentures capable of such re-issue must be given in a company's balance sheet. A lender should insist on such debentures being cancelled.

Debentures given to secure advances from time to time on current account or otherwise are not redeemed merely because the account goes into credit.

Default in payment of interest and/or principal will give the debenture holder the right

(1) To sue the company for the amount due.
(2) To apply to the Court for an order for foreclosure or for sale.
(3) To appoint a receiver.

If there is a trust deed, the trustee may take possession of the assets charged and sell them for the benefit of the debenture holders.

(See also under RECEIVER FOR DEBENTURE HOLDERS.)

SPECIAL FEATURES OF A DEBENTURE GIVEN TO A BANK. These are of two main types—fixed sum debentures and "all moneys" debentures. A fixed sum debenture will either be a single instrument or a series of debentures making up the total sum lent. The advantage of this type over an "all moneys" debenture is said to be that it would be possible to sell the debenture as opposed to selling the assets charged thereunder.

It is considered that with a fixed sum debenture it might be looked upon as an investment by the bank, thus limiting the bank's right to that of an ordinary debenture holder. This might mean that the bank would be unable to sue on the banking account as opposed to the debenture. Hence

it is customary to have the debenture accompanied by a form of agreement linking it up with the banking account and making it available for a fluctuating advance by way of loan or overdraft. The agreement provides that the debenture shall be held as a continuing security for all moneys owing now or in the future; it provides for interest at the banker's usual fluctuating rate, as opposed to the fixed rate that may be contained in the debenture; it gives the bank an express power of sale over the debenture.

An "all moneys" debenture probably appeals more to a company than a fixed debenture plus a memorandum of agreement. It is not capable of sale and hence the company knows that it can have only the bank to reckon with. Then the registration of a fixed sum debenture means publishing a figure which may never be reached, with detrimental effect on the company's creditors. An "all moneys" debenture will suffice if increased advances are required, provided the stamping is increased, whereas with a fixed sum debenture increases over the amount inserted means a further debenture and agreement.

Practice differs among banks as to the type of debenture used; likewise some banks have a standard printed form whilst others have a debenture drafted to meet the particular circumstances. In any case the main contents are as follows: reference will be made to the resolution of the company or directors authorising the debenture; it will be drawn in favour of the bank or its nominee company or sometimes it is drawn in blank; it will be expressed to be payable on demand and interest will be stipulated for at a fixed rate or a fluctuating rate with quarterly or half-yearly rests. Then the company charges as security all its undertaking and property present and future, including its uncalled capital. This is followed by the conditions of issue, namely that the debentures shall be a first charge on the undertaking and property of the company and shall constitute a fixed charge on specific property listed in a schedule and also on any fixed machinery and plant, goodwill and uncalled capital. Such a charge, though specific, is equitable only and the bank gets none of the remedies of a legal mortgagee other than the power to appoint a receiver. Hence it is becoming customary to get a legal mortgage over the company's land and buildings by using the statutory formula of "a charge by way of legal mortgage." The company should in any case covenant to deposit the relative title deeds with the bank. Then will follow a floating charge on all the other assets, with a covenant not to create any further mortgages or charges to rank side by side with or in front of the bank's debenture. By including this covenant in the details registered at Bush House or by insisting on the debenture being authorised by special resolution (which requires registration), subsequent proposed lenders are warned. Finally the conditions under which the moneys secured shall become payable are enumerated. They include written demand by the bank, default of the company with interest for, say, two months, the commencement of voluntary or compulsory winding up, cessation of business by the company, appointment of a receiver, and the alteration or attempted alteration of the company's memorandum and articles of association in a manner prejudicial to the bank. A right to inspect the company's books is desirable where a floating charge is given. Powers to appoint a receiver are taken and he is expressed to be the agent of the company and not of the bank so as to make the company responsible for his acts, default, and remuneration.

Where a banker takes a debenture from a newly incorporated company formed to acquire the assets of a sole trader or firm, he should ascertain that all the creditors of the old concern have been satisfied or have consented to the transfer of the assets to the newly incorporated company. Otherwise such transference may be used by an unsatisfied creditor as an act of bankruptcy in the shape of a fraudulent conveyance. If such creditor presents a petition within three months founded on this act of bankruptcy and a receiving order results, the trustee's title will relate back to the date of the transfer of the assets to the company and thus the debenture will be void. "A transfer by a debtor of substantially the whole of his property, whether by way of charge or by way of sale, will be an act of bankruptcy if the necessary consequences of the transfer will be to defeat or delay his creditors." (*In re Sims*, [1930] 2 Ch. 22.)

See under DIRECTORS the case of *Victors, Ltd.* v. *Lingard, re* the giving of a debenture by a company where a joint and several guarantee of the directors was already held. (See also FLOATING CHARGE, RECEIVER.)

DEBENTURE HOLDER. The person who holds a debenture. He may be either a

registered holder, or a holder of a debenture payable to bearer. In the former case a document of transfer is necessary to pass the ownership to another person, but in the latter case the debenture is transferable by simple delivery.

A debenture holder is a creditor of the company, as the debenture represents a loan to the company, and the interest thereon must be paid before any dividend is received by the shareholders. (See DEBENTURE.)

DEBENTURE STOCK. Debenture stock is essentially the same as debentures, and both are usually secured by a charge or mortgage. Debentures, however, are for definite round sums, as separate debts, whereas certificates of debenture stock are for different amounts, as parts of one large debt.

The certificates do not require a stamp, but any deed creating a security for the stock is subject to the same duty as a mortgage (*q.v.*).

When a certificate of debenture stock is given as security, a transfer from the registered holder to the bank's nominees, accompanied by a qualifying agreement, should be taken, and, to make the security fully satisfactory, the transfer should be registered. (See BLANK TRANSFER, DEBENTURE, LOAN CAPITAL, SHARE CAPITAL, TRANSFER OF SHARES.)

DEBENTURE TRUST. The usual method of securing an issue of mortgage debenture stock is for a company to execute a trust deed whereby trustees are appointed to hold the assets which are specifically charged to secure the debenture stock. The modern practice is to constitute a trust corporation the trustee for debenture-holders rather than to appoint private trustees. The Public Trustee cannot act in this capacity, however.

The trustees' duties include the custody of the title deeds of the property charged, the sale of the assets charged when the security becomes enforceable, and the distribution of the proceeds to the stockholders, the appointment of a receiver in case of need, and the supervision of any sinking fund scheme.

Professional trustees must take power in the trust deed to enter into transactions with the company in the ordinary course of their business, e.g. a bank acting as a trust corporation must take power to carry on banking business with the company.

The Cohen Committee on Company Law deprecated the assumption of a debenture trusteeship by a bank which also keeps the company's banking account. The Council of the Stock Exchange will not grant a quotation for a debenture issue in such circumstances.

DEBTS, ASSIGNMENT OF. A customer may assign to a banker any money which is due, or will be due, to him. This may be effected by a letter signed by the customer, addressed to the person who owes him money, requesting that the debt be paid to the banker. The letter will be retained by the banker, who should give written notice at once to the debtor of the assignment, and ascertain from him if the debt is as stated, and if it is free from any prior charge. It is desirable to obtain an acknowledgment from the debtor. The banker should be able to prove that he sent the notice in case the debtor does not acknowledge it. In an equitable assignment of a debt "all that is necessary is that the debtor should be given to understand that the debt has been made over by the creditor to some third person. If the debtor ignores such a notice he does so at his peril." (*William Brandt's, Sons & Co.* v. *Dunlop Rubber Co.*, [1905] A.C. 454.)

Although an assignment of a debt may take the form of an order or a letter, the more satisfactory method is to have executed a mortgage assigning the debt absolutely, subject to the right of redemption, and notice should be given at once to the party owing the money. Until notice is given, the debtor may pay the debt direct to the assignor. The assignment must be absolute (not by way of charge only), must be in writing, and signed by the assignor. In order that the banker, as assignee, may not be held liable to the assignor for any loss which might arise from the banker's failure to enforce the necessary remedies for payment of the debt, there should be a clause in the deed to the effect that it shall not be incumbent on the banker to sue for the debt.

It has been held that an assignment by way of mortgage made in the usual form of an absolute conveyance with a proviso for redemption is an "absolute assignment." (*Durham Bros.* v. *Robertson*, [1898] 1 Q.B. 765.)

In the Court of Appeal (*Hughes* v. *Pump House Hotel Co., Ltd.*, [1902] 2 K.B. 190) Mathew, L.J., said: "If, on consideration of the whole instrument, it is clear that the intention was to give a charge only, then the action must be in the name of the assignor; while, on the other hand, if it is

clear from the instrument as a whole that the intention was to pass all the rights of the assignor in the debt or *chose in action* to the assignee, then the case will come within Section 136 [see below] and the action must be brought in the name of the assignee." In this case an assignment of debts was given "by way of continuing security." It was held that the assignment was absolute and not by way of charge only.

The banker's right to the debt dates from the date of the notice (see Section below), and until the notice has been given a subsequent assignee might, by giving notice, obtain priority to the banker; but an assignee cannot, by giving notice, obtain priority over a previous assignment if he knew of the former charge at the time when he obtained his own assignment. When notice has been given, it will, in the event of the bankruptcy of the assignor, prevent the debt passing to the Trustee in Bankruptcy under Section 38, Bankruptcy Act, 1914. (See REPUTED OWNER.)

By Section 136, subsection (1), of the Law of Property Act, 1925, it is enacted as follows—

"Any absolute assignment, by writing under the hand of the assignor (not purporting to be by way of charge only), of any debt or other legal thing in action, of which express notice in writing has been given to the debtor, trustee, or other person from whom the assignor would have been entitled to claim such debt or thing in action, is effectual in law (subject to equities having priority over the right of the assignee) to pass and transfer from the date of such notice, the legal right to such debt or thing in action, all legal and other remedies for the same, and the power to give a good discharge for the same, without the concurrence of the assignor: Provided that, if the debtor, trustee, or other person liable in respect of such debt or thing in action has notice that the assignment is disputed by the assignor or any person claiming under him, or of any other opposing or conflicting claims to such debt or thing in action, he may if he think fit, either call upon the persons making claim thereto to interplead concerning the same, or pay the debt or other thing in action into court under the provisions of the Trustee Act, 1925."

The notice required by the above subsection must be in writing. A verbal notice of the assignment is not sufficient. (*Hockley and Papworth* v. *Goldstein* (1921), 124 L.T. 277.)

If the debtor has a counter claim against the assignor, the assignee will be entitled only to the balance of the debt after allowing for the counter claim. The banker should, therefore, before taking an assignment, ask the debtor if he has a counter claim and also, as mentioned above, ask what is the actual amount of the debt and whether there is any prior charge.

A cheque is not an assignment of money in favour of the payee, as the banker is liable only to the drawer; but if a customer formally assigns his balance to a third party and the banker receives notice thereof, his liability is then to the assignee. In Scotland, the presentment of a cheque attaches any balance there may be in the drawer's account to the extent of the cheque. (See under DRAWEE.)

A document which purports to transfer the property in goods as well as to assign the proceeds of their sale, constitutes a bill of sale and must be registered as such. (*National Provincial and Union Bank of England* v. *Lindsell* (1921), 66 Sol. J. 48.) An assignment merely of the proceeds of a sale of goods does not require registration as a bill of sale. (*Walker* v. *Capital and Counties Bank and Others* (1910), (*The Times*, 16th Dec., 1910.)

In *Bank of Liverpool & Martins, Ltd.* v. *Holland* (1926), 43 T.L.R. 29, the defendant owed £285 to W., who owed money to the plaintiff bank. W. assigned to the bank the debt due to him by the defendant. Due notice of the assignment was given to the defendant. The assignment declared, "that the amount recoverable under these presents shall not at any time exceed the sum of £150." Wright, J., in his judgment, said that even if it was an assignment of only part of the debt it would still be a good equitable assignment, but in his view it was not an assignment of part of the debt but was an absolute assignment to the bank of the whole debt with a proviso that if the bank should recover more than £150 from the debtor, they must hold the balance in excess of £150 as trustees for the assignor. The assignment was held to be a good legal assignment and judgment was given for the bank.

When a company assigns to a bank as security a book debt due to the company, the assignment must be registered under Section 95 of the Companies Act, 1948. (See REGISTRATION OF CHARGES.)

As to a general assignment of book debts, the Bankruptcy Act, 1914, provides—

"Section 43.—(1) Where a person engaged in any trade or business

makes an assignment to any other person of his existing or future book debts or any class thereof, and is subsequently adjudicated bankrupt, the assignment shall be void against the trustee as regards any book debts which have not been paid at the commencement of the bankruptcy, unless the assignment has been registered as if the assignment were a bill of sale given otherwise than by way of security for the payment of a sum of money, and the provisions of the Bills of Sale Act, 1878, with respect to the registration of bills of sale shall apply accordingly, subject to such necessary modifications as may be made by rules under that Act;

"Provided that nothing in this Section shall have effect so as to render void any assignment of book debts due at the date of the assignment from specified debtors, or of debts growing due under specified contracts, or any assignment of book debts included in a transfer of a business made *bona fide* and for value, or in any assignment of assets for the benefit of creditors generally.

"(2) For the purposes of this Section, 'assignment' includes assignment by way of security and other charges on book debts."

Under Section 136 of the Law of Property Act, a customer may assign to a third party any balance on his current account or deposit account, or the amount of a deposit receipt. On receipt of notice of the assignment the account should be "stopped." See further as to an assignment of a debt to a banker under TRANSFER OF MORTGAGE. An assignment is subject to *ad valorem* conveyance duty if on sale or in consideration *pro tanto* of any debt under Section 57 of the Stamp Act, 1891. (Alpe's *Law of Stamp Duties*.) See that Section under CONVEYANCE. An assignment by way of mortgage is liable to *ad valorem* mortgage duty.

(See REGISTRATION OF CHARGES.)

DECIMAL COINAGE. The Report of the Committee appointed to inquire into the adoption of a decimal coinage, and the metric system of weights and measures, was adopted at a special meeting of the Council of the Institute of Bankers on May 2, 1917. The following is from the Report:—

"Your Committee are of opinion that the existing system of weights and measures in this country is an obstacle in the way of the extension of our foreign trade, and more especially of our export trade. This is, indeed, one of the main considerations which has influenced your Committee in recommending the adoption of a decimal coinage, as they hope that it may be the first step towards the introduction of the metric system of weights and measures into this country.

"Your Committee are convinced that no decimal system of coinage which is not based on the pound sterling can possibly be accepted by the bankers of this country, and that the present pound sterling, unchanged in weight and fineness, must remain the unit of value. The pound sterling is universally recognised in the settlement of international transactions throughout the world, and any abandonment, even in name only, of its use as our standard unit, would be fraught with risks which your Committee consider it would be unwise to incur.

"Your Committee have therefore decided to recommend a decimal system based on the pound sterling, to be divided into a thousand parts called mils, the coinage to be as follows—

		£		
Gold	Sovereign	1·000	= 1,000	mils
	Half-sovereign	·500	= 500	,,
		£		
Silver	Double Florin (or four-shilling piece)	·200	= 200	mils
	Florin (or two-shilling piece)	·100	= 100	,,
	Half-florin (or shilling)	·050	= 50	,,
	Quarter-florin (or sixpence)	·025	= 25	,,
Nickel or some other metal or alloy. To be scalloped	Ten-mil piece	·010	= 10	mils
Bronze	Four-mil piece	·004	= 4	,,
	Two-mil piece	·002	= 2	,,
	Mil	·001	= 1	,,

"If the proposed system be adopted, there will be no change in the gold coinage. The existing silver coins will continue (in some cases under new names) with the exception of the crown, half-crown, and threepenny piece, which it is proposed to discontinue."

The coinage of France, Belgium, Spain, Italy, the United States and other countries, is arranged on the decimal system.

DECIMALS. The interest calculations in the current account ledgers are commonly

called "decimals." The correct term, however, is "products." The working of the system is most easily explained by an example: if a credit balance of £100 remains unaltered for 10 days, at which date another transaction on the account takes place, the ledger keeper multiplies the £100 by 10 days and puts the 1,000 product in the credit "decimals" column. Each succeeding balance is dealt with in the same way, being multiplied always by the number of days between the date of the balance and the date of the next balance being extended, consequent upon another entry appearing in the account. The interest on £100 for 10 days is the same as on £1,000 for 1 day, or on £1 for 1,000 days, at the same rate, and so when the products (i.e. the "decimals" so called) are cast up at the half-year end, the total will represent the number of pounds for one day on which interest is to be allowed, or charged, as the case may be, and the amount can then readily be ascertained from the tables prepared for the purpose. The last two right-hand figures are, as a rule, ignored, and the interest is reckoned upon the hundreds of products. (See INTEREST ON DEPOSITS.)

DECLARANT. A person who makes a declaration.

DECLARATION. A formal statement, or declaration, in writing.

By the Stamp Act, 1891, the stamp duty is

	£	s.	d.
DECLARATION of any use or trust of or concerning any property by any writing, not being a will, or an instrument chargeable with *ad valorem* duty as a settlement	0	10	0

DECLARATION (*Statutory*). (See AFFIDAVIT.)

DECLARATION OF ASSOCIATION. The declaration of association is the last clause in a memorandum of association, which, in the case of a company limited by shares, is as shown at the top of next column (Table B, First Schedule, Companies Act, 1948).

No subscriber of the memorandum may take less than one share. (See MEMORANDUM OF ASSOCIATION.) Subscribers frequently sign for only one share each.

DECLARATION OF TRUST. The term "bill of sale" includes a "declaration of trust without transfer." (See BILL OF SALE, TRUST RECEIPT.)

DEDUCING A TITLE. The examination of title deeds with a view to establishing the owner's title thereto. (See ABSTRACT OF TITLE, TITLE DEEDS.)

"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.	200
2.	25
3.	30
4.	40
5.	15
6.	5
7.	10
Total shares taken . .	325

Witness ,,

DEED. A deed is a document in writing, or printing, on paper or parchment, which is signed, sealed and delivered by the parties thereto. The fact of a document being under seal does not necessarily constitute it a deed, e.g. a will under seal, and a certificate of shares under the seal of a company are not deeds. An instrument is a deed when it is sealed and delivered as a deed.

Deeds are now signed and sealed, though at one time it was sufficient if they were merely sealed and delivered. In the olden times persons would often be unable to write, and the sealing of the document with their own private seal would be of the first importance, but now that nearly all persons can write, the signature to a deed is the principal matter, the seal being merely a formal affair. The deed must be sealed, but it is no longer necessary that it should be the seal of the person who is sealing. It may be the seal of anyone, or a drop of wax, or simply a red wafer. The seals may be put on a deed before the parties sign, and touching a seal with the finger at the time of signing has the effect of sealing. There must be a separate seal for each person. If a deed is read over to a person who cannot read, the attestation clause should be "signed, sealed and delivered by the said John Brown, the document having first been read over to him when he appeared fully to understand the same."

In addition to being signed and sealed, a deed must be delivered, and this is usually accomplished by the party placing a finger on the seal and saying, "I deliver this as my act and deed." A deed takes effect from

the date of its delivery. It is not necessarily an essential part of a deed that there should be a date upon it. The date of the execution can be proved. (See DATE.)

A special note in the attestation clause of any material alteration or erasure in the deed should be made at the time the deed is signed and witnessed.

It is customary for a deed to be witnessed, but the absence of the attestation by a witness does not invalidate it.

There is no prescribed size or shape for a deed, and they are found in different forms and sizes. Many modern deeds are drawn on comparatively small sheets, fixed together in book form, which are much more easily read and dealt with than the old full-sized sheets with the long lines.

There are two kinds of deeds, an Indenture (*q.v.*), which is made between two or more parties, and a Deed Poll (*q.v.*), which is made by only one person, or by more than one if their interests are the same.

Blackstone says it is called a deed "because it is the most solemn and authentic act that a man can possibly perform with relation to the disposal of his property; and therefore a man shall always be estopped by his own deed, or not permitted to aver or prove anything in contradiction to what he has once so solemnly and deliberately avowed."

By the Law of Property Act, 1925, any deed, whether or not being an indenture, may be described as a deed simply, or as a conveyance, mortgage, transfer of mortgage, lease or otherwise according to the nature of the transaction. (Section 57.) Thus, instead of starting with the words "This Indenture," a deed may start "This Conveyance," "This Legal Charge," "This Deed."

Where a person executes a deed, he shall either sign or place his mark upon it; sealing alone shall not be deemed sufficient. (Section 73.)

By the Stamp Act, 1891, the stamp duty is—

	£	s.	d.
DEED whereby any real burden is declared or created on lands or heritable subjects in Scotland. See MORTGAGE, and Section 86.			
DEED containing an obligation to infeft any person in heritable subjects in Scotland, under a clause of reversion, as a security for money. See MORTGAGE, and Section 86.			
DEED containing an obligation to infeft or seize in an annuity to be uplifted out of heritable subjects in Scotland. See BOND, COVENANT.			
DEED of any kind whatsoever, not described in this schedule . .	0	10	0

(The stamp duties on conveyances are given under CONVEYANCE.)

(See ESCROW, TITLE DEEDS.)

DEED OF ARRANGEMENT. A deed of arrangement whether under seal or not, made by a debtor for the benefit of his creditors, otherwise than under the Bankruptcy Acts, includes (1) an assignment of his property to a trustee, in order that it may be realised and the proceeds divided amongst the creditors (see ASSIGNMENT FOR BENEFIT OF CREDITORS); and (2) a deed or agreement under which the creditors agree to accept a composition—that is, a payment of so much in the pound in full discharge of the debts due by the debtor to them (see COMPOSITION WITH CREDITORS); and, in cases where creditors of a debtor obtain any control over his property or business, it also includes a deed of inspectorship entered into for the purpose of carrying on or winding up the business; and a letter of licence authorising the debtor or any other person to manage, carry on, realise, or dispose of a business, with a view to the payment of debts; and any agreement or instrument authorising the debtor or any other person to manage, carry on, realise, or dispose of the debtor's business, with a view of the payment of his debts (Section 1 to the Deeds of Arrangement Act, 1914).

A deed of arrangement is void unless registered at the Board of Trade within seven clear days after the first execution thereof by the debtor or any creditor (Section 2 of the above Act).

By the Deeds of Arrangement Act, 1914, Section 3—

> A deed of arrangement shall be void unless, before or within twenty-one days after the registration thereof, or within such extended time as the High Court or the Court having jurisdiction in bankruptcy in the district in which the debtor resided or carried on business at the date of the execution of the deed may allow, it has received the assent of a majority in number and value of the creditors of the debtor (s.s. (1)).

The assent of a creditor shall be established by his executing the deed of arrangement or sending to the trustee his assent in writing attested by a witness (s.s. (3)).

The trustee shall file with the Board of Trade when the deed is registered, or in the case of a deed assented to after registration, within twenty-eight days after registration or such extended time as the court may allow, a statutory declaration by the trustee that the requisite majority of the creditors have assented to the deed (s.s. (4)).

In calculating a majority of creditors for the purposes of this Section a creditor holding security upon the property of the debtor shall be reckoned as a creditor only in respect of the balance due to him after deducting the value of such security, and creditors whose debts amount to sums not exceeding ten pounds shall be reckoned in the majority in value but not in the majority in numbers (s.s. (5)).

By Section 11 (1), it is enacted that the trustee under a deed of arrangement shall give security to the Registrar of the bankruptcy court, in a sum equal to the estimated assets available for distribution among the unsecured creditors, to administer the deed properly, unless a majority in number and value of the creditors dispense with his giving such security.

"All moneys received by a trustee under a deed of arrangement shall be banked by him to an account to be opened in the name of the debtor's estate." (Section 11 (4).)

The deed, if an assignment, is an available act of bankruptcy; and if bankruptcy ensue within three months, or one month under Section 24 (see ACT OF BANKRUPTCY), on the petition of any dissentient creditors, the trustee in bankruptcy can claim all moneys paid into the account referred to in Section 11 (4). During that period, therefore, cheques should not be drawn upon the account. As the section indicates, the account should be opened "in the name of the debtor's estate."

The trustee shall at the expiration of every six months send to each creditor who assented to the deed of arrangement, a statement of the trustee's accounts and of the proceedings under the deed. (Section 14.)

If an overdraft is required on the personal liability of a trustee, a guarantee should be taken.

As to the validity of certain payments to a person who has committed an act of bankruptcy, or to his assignee, see Section 46, Bankruptcy Act, 1914, under ACTS OF BANKRUPTCY.

The register may be searched on payment of 1s. 0d. The registrar transmits a copy of each deed to the registrar of the county court in the district of which the place of business or residence of the debtor is situate, and any person may search such registered copy on payment of a similar fee. (See BANKRUPTCY.)

A deed of arrangement affecting land should be registered under the Land Charges Act, 1925. (See LAND CHARGES.)

If A.B. (who has executed a deed of arrangement and whose creditors have agreed that he may carry on the business) wishes to continue his banking account, it would be advisable to consult the trustee as to the exact position. If all the creditors of A. B. have agreed to the arrangement the bank would be safe in continuing the account, but there is always the possibility that, unknown to the assenting creditors, there may be a creditor who has not agreed to the arrangement, and this creditor may, if his debt amounts to £50 or over, take advantage of the act of bankruptcy during the available period to throw the estate into bankruptcy. In such an event the title of the trustee in bankruptcy would relate back to the time of the first act of bankruptcy committed within three months preceding the date of the presentation of the bankruptcy petition. (See under ADJUDICATION IN BANKRUPTCY.)

DEED OF ASSIGNMENT. (See ASSIGNMENT FOR BENEFIT OF CREDITORS.)

DEED OF GIFT. The conveyance of a property as a gift.

In the case of a voluntary deed of gift, the deed is void against the Trustee in Bankruptcy if the settlor becomes bankrupt within two years from the date thereof, and if he becomes bankrupt within ten years, it is void, unless it can be proved that he was, at the time of making the gift, able to pay all his debts without the property comprised in the deed of gift. (But see under SETTLEMENTS—SETTLOR BANKRUPT, as to taking such property as security. A purchaser for value includes mortgagee.)

By Section 47 of the Finance Act, 1946, a disposition purporting to act as an immediate gift will not free the donor's estate from liability for estate duty thereon, unless made five years before his death (previously the time limit was three years). The consideration in a deed of gift may be "natural love and affection."

Where shares are transferred as a gift, the consideration is expressed as a nominal one, say, five or ten shillings. The stamp duty on gifts *inter vivos* is the same as on a conveyance or transfer on sale, with the substitution in each case of the value of the property conveyed or transferred for the amount or value of the consideration. See Section 74, s.s. (4), (5), and (6), Finance (1909–10) Act, 1910, under head CONVEYANCE. (See GIFTS INTER VIVOS.)

DEED OF INSPECTORSHIP. A deed by which an insolvent debtor places his affairs in the hands of his creditors, who may appoint inspectors or trustees, in order that the business may be wound up to the best advantage or carried on for the benefit of the creditors, as may be thought desirable. (See DEED OF ARRANGEMENT.)

DEED OF SETTLEMENT. The document which took the place of the memorandum and articles of association in old joint stock companies formed prior to the Companies Act of 1862. If the company with a deed of settlement has subsequently become registered under the Companies Act, that deed still continues, but by Section 395 of the Companies Act, 1948, "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." The expression "deed of settlement" includes any contract of co-partnery or other instrument constituting or regulating the company, not being an Act of Parliament, a Royal Charter, or Letters Patent. (See LIEN, SETTLEMENT.)

DEED POLL. A deed to which there is only one party or one set of parties. A deed poll was cut or polled straight at the edge.

A deed poll commences: "Know all men by these presents," etc., and the date appears at the end. In an indenture the date is at the beginning. (See INDENTURE.)

DEFACED COINS. Gold, silver, or copper coin which is defaced by being stamped with any name or words thereon, whether such coin is or is not thereby diminished in weight, is not a legal tender (24 & 25 Vict. c. 99, Section 7). (See LEGAL TENDER.)

DEFACED NOTES. By the Currency and Bank Notes Act, 1928, if any person prints, or stamps, or by any like means impresses, on any Bank of England note any words, letters, or figures he shall, in respect of each offence, be liable to a penalty not exceeding one pound. (Section 12.)

The Bank of England does not object, however, to the code stamp of a bank being impressed on the back of notes for £5, but it must not be placed on the face of the note.

Section 12 does not affect the negotiability of any such defaced note. The only person who is liable to the penalty is the person who defaces the note.

DEFEASANCE. (French *défaire*, to undo.) A document containing a condition upon the fulfilment of which the contract in the deed to which it refers is defeated or rendered void. The condition itself is also called a defeasance. The document of this nature with which a banker is most familiar is the qualifying agreement which is signed by a customer at the same time as he executes a transfer of stock or shares to the banker as security for an advance. The transfer is an absolute conveyance of the security into the banker's name, but the agreement, or defeasance, operates to make the transfer subject to the customer's right to have the security re-transferred upon the repayment of the advance.

As to an absolute disposition of property in Scotland, qualified by a back-letter or back-bond, see DISPOSITION ABSOLUTE.

The Stamp Act, 1891, provides as follows—

DEFEASANCE. Instrument of defeasance of any conveyance, transfer, disposition, assignation, or tack, apparently absolute, but intended only as a security for money or stock.

See MORTGAGE, and Section 86.

In respect of marketable securities under hand only, see AGREEMENT, and Section 23.

DEFERRED ANNUITY. An annuity, or annual payment of a certain sum, which does not commence till after a specified time. For example, a person may at any time purchase, by either a single premium or a yearly premium, a deferred annuity as a provision for old age, the payments not to commence till he attains the age of, say, 55 or 60, or any age selected.

At the age of 30, a single premium of £65 11s. 3d., or a yearly premium of £5 0s. 11d., may purchase an annuity of £10 to commence twenty years hence. (See ANNUITY.)

DEFERRED BONDS. Bonds upon which the rate of interest gradually increases until a certain specified rate is reached, when they are changed into active bonds bearing a fixed rate of interest.

DEFERRED INTEREST CERTIFICATE or **DEFERRED INTEREST WARRANT.** The name of a document issued by a company for interest, payment of which has been postponed or deferred.

In *Attorney-General* v. *South Wales Electrical Power Distribution Co. and Another* (1919), 36 T.L.R. 126, where the company, instead of paying in cash the interest due on certain debenture stock, issued to the holders of such stock deferred warrants for the amount of the interest due, such warrants themselves carrying interest, it was held that the defendants had not by the issue of deferred warrants issued loan capital within Section 8 of Finance Act, 1899, and were not liable to an *ad valorem* duty under that Section. The issue of deferred warrants "was not capital at all, but afforded a mode of postponing payment of overdue interest in consideration of paying interest on the overdue interest." (See above-named Section under LOAN CAPITAL.)

DEFERRED SHARES, DEFERRED STOCK. Shares or stock which do not receive a dividend until the shares or stock which rank in front have been satisfied. The capital of a company may be divided into preference, ordinary, and deferred shares or stock, or the ordinary stock may (e.g. statutory companies which have special powers by Act to do so) be split up into preferred and deferred ordinary. The interest on founders' shares is deferred to the claims of prior shares.

DEFICIENCY ADVANCES. When the revenue balance in the Bank of England to the credit of the Government is insufficient for payment of the quarterly dividends, the deficiency is borrowed from the Bank, the advances being known as "deficiency advances." These advances must be paid off before the end of the quarter, and the rate of interest charged is one-half of the Bank of England rate of discount, with a maximum of three per cent. "Deficiency advances" are to meet permanent charges; "ways and means advances" (*q.v.*) are to meet payments for the annual supply services.

DEFICIENCY BILLS. A former method of borrowing from the Bank of England by the Treasury to meet permanent charges on the Consolidated Fund. This is now effected by "Deficiency Advances" (*q.v.*).

DEFINITIVE BOND. Where bonds are to be issued, for example, in connection with a Government loan, a scrip or provisional certificate is issued on payment of the money due upon allotment. This certificate is held until all the instalments have been paid, when it is exchanged for the definitive bond; that is, the final bond with coupons attached. (See SCRIP CERTIFICATE.)

DEFUNCT COMPANY. When the registrar ascertains that a company has ceased to carry on business, or if he fails to receive any reply to his letters of inquiry addressed to the company, he may publish in the *Gazette* a notice that, at the expiration of three months from the date of the notice, the company's name will, unless cause is shown to the contrary, be struck off the register, and the company will be dissolved. (Section 353, Companies Act, 1948.) (See COMPANIES.)

DEL CREDERE. A *del credere* commission is an extra commission paid by a principal to an agent when the agent guarantees the solvency of a customer to whom he has sold goods on credit.

DELEGATION OF AUTHORITY. Where a person is acting under authority he cannot (unless his appointment expressly permits it) delegate his authority; that is, he cannot appoint someone else to act for him.

Where an account has been opened in the names of several trustees, the cheques should be signed by all the trustees, as they cannot, unless the instrument of trust specially gives the power, delegate their authority to one or more of their number. (See TRUSTEE.)

Trustees may derive their authority under a will, or a trust deed, and when any question of delegation arises, the banker should see that document and ascertain exactly what may or may not be done. If there is no permission given to delegate, then all must join in drawing cheques.

Under the Trustee Act, 1925, trustees, executors and administrators are given power to employ agents. By Section 23 (1), trustees or personal representatives may, instead of acting personally, employ and pay an agent, whether a solicitor, banker, stockbroker, or other person, to transact any business in the execution of the trust, or the administration of the testator's or intestate's estate, including the receipt and payment of money. The words "employ and pay an agent" are inapplicable to trustees delegating any of their powers to one or more of themselves. (See under TRUSTEE.)

It frequently happens that the trustees of a church, or chapel, or association, desire that cheques may be signed by only a few of their number, and in such cases the trust deed should be consulted. Where trustees are numerous, it seems reasonable that a few should act for the many, but a banker would,

nevertheless, be liable if the few, acting on a mandate from the whole body, drew cheques and misappropriated the money, unless the trust deed sanctioned the delegation.

An agent, or secretary, or treasurer, or manager, or other person deriving authority from a principal cannot delegate his authority unless there is an agreement express or implied to allow it.

Where there are several executors, one may, in the absence of any instructions to the contrary, draw cheques upon the executors' account, but it is desirable that a form of mandate is signed. (See MANDATE.)

DELEGATIONS. The name given by bankers on the Continent to documents in the form of a letter of credit, but which are intended to pass as bills of exchange. In this country they are, for the purpose of stamp duty, treated as bills of exchange.

DELIVERY OF BILL. "Delivery" means transfer of possession, actual or constructive, from one person to another (Section 2, Bills of Exchange Act, 1882).

Section 21 of the same Act provides—

"(1) Every contract on a bill, whether it be the drawer's, the acceptor's, or an indorser's, is incomplete and revocable, until delivery of the instrument in order to give effect thereto.

"Provided that where an acceptance is written on a bill, and the drawee gives notice to or according to the directions of the person entitled to the bill that he has accepted it, the acceptance then becomes complete and irrevocable.

"(2) As between immediate parties, and as regards a remote party other than a holder in due course, the delivery—

"(*a*) in order to be effectual must be made either by or under the authority of the party drawing, accepting, or indorsing, as the case may be:

"(*b*) may be shown to have been conditional or for a special purpose only, and not for the purpose of transferring the property in the bill.

"But if the bill be in the hands of a holder in due course a valid delivery of the bill by all parties prior to him so as to make them liable to him is conclusively presumed.

"(3) Where a bill is no longer in the possession of a party who has signed it as drawer, acceptor, or indorser, a valid and unconditional delivery by him is presumed until the contrary is proved."

Just as a deed is of no legal effect until it has been delivered, so, it is seen from the above Section, a bill of exchange is incomplete and revocable until delivery of the instrument, in order to give effect thereto. Where a cheque is stolen from, or lost by, the drawer before he has issued it, the thief or finder of the cheque would have no claim against the drawer; but if the cheque gets into the hands of an innocent holder for value, he would (according to the judgment in *Ingham* v. *Primrose* (1859), 28 L.J., C.P. 294) have the right to enforce payment against the drawer. When this case was reviewed by Brett L.J. in *Baxendale* v. *Bennett* (1878), 3 Q.B.D. 525 he said that he did not agree with it.

In *Baxendale* v. *Bennett* (1878), 3 Q.B.D 525, where an acceptance in blank by the defendant had been stolen and a drawer's name was filled in, an action was brought on it by the plaintiff as indorsee for value. It was held that the defendant was not liable on the bill, as he had not authorised anyone to fill in a drawer's name and had not issued the acceptance. (See STOLEN BILL, STOLEN CHEQUE.)

(See BILL OF EXCHANGE, NEGOTIATION OF BILL OF EXCHANGE, ISSUE OF BILL, TRANSFEROR BY DELIVERY.)

DELIVERY OF CHEQUE. (See DELIVERY OF BILL.)

DELIVERY OF DEED. (See DEED.)

DELIVERY ORDER. An order addressed to a railway office, shipping company, dock company, or superintendent of warehouses, to deliver certain goods to the person named therein. Such orders are sometimes sent to a bank from a correspondent to be handed over to the right party on payment of the sum named. In some cases a cash order is attached to the delivery order, and on payment of the cash order, the delivery order is given to the person entitled to it.

The following is a form of letter from a bank sending a delivery order to another bank.

Leeds , 19 .

THE BRITISH BANK, LIMITED,

beg to enclose herewith Delivery order for parcels marked

which please hand to Mr. on payment of £

Please retain the order till called for, and credit us with the proceeds.

To the X & Y Bank, Ltd.,
Carlisle.

The following are copies of two delivery orders—

King Street,
Leeds 19 .

To the GOODS AGENT,
British Railways,
Carlisle.

Please deliver the parcels marked sent to my order to Mr.

JOHN BROWN.

No.

Bonded Warehouses.

19 .

To the SUPERINTENDENT at H.M. Customs Warehouse No.

Please deliver the undernoted to the order of or assigns by indorsement hereon on payment of rent and charges from

Mark
No.
Contents

Entd. J. JONES & COY.

Unless the holder of a delivery order at once obtains delivery of the goods, or obtains in place of it a warrant or receipt from the warehouse-keeper, or gets his title to the goods registered in the books of the warehouse-keeper, the holder runs the risk of a second delivery order being acted upon.

Where a delivery order was indorsed over to a bank as security, it was held (*Imperial Bank* v. *London and St. Katharine's Dock Coy.* (1877), 5 Ch. D. 195) that the bank were not the actual owners and had only a modified ownership in the goods. The bank could have sent a representative with the delivery order to the docks and obtained the goods, or a dock warrant in exchange for the order. The bank, however, merely lodged it at the company's London office with a request for dock warrants to be made out as soon as possible. In the meantime a third party, without notice of the bank's claim, had obtained a second delivery order, and had taken it direct to the docks office and obtained a dock warrant (that is, a receipt by the dock company stating that the goods were entered in his name in their books). It was held that "there is no delivery or constructive possession until the delivery order gets down to the docks, and is recognised by an entry in the dock books."

When delivery orders are taken as security, the banker's letter of lien (stamped 6d.) should be signed by the customer, and the bank should instruct the warehouse-keeper to store the goods in the bank's name. In the event of the owner's bankruptcy before the goods are registered in the bank's name the property will vest in the trustee in bankruptcy. When a bank issues delivery orders to a customer against goods warehoused in the bank's name the customer should undertake to pay the proceeds to the bank. The form to be used may be as follows—

To THE BRITISH BANK, LTD.

We have received delivery order upon for ex warehoused in your name, and held by you by way of pledge for No. for £ and which delivery order has been handed to us for the purpose of enabling us to complete the sale which we have contracted for on your behalf with and in consideration thereof we hereby undertake to pay to you the proceeds of the said Merchandise immediately and specifically as received, in accordance with the directions which we have already received from you to that effect.

The said Merchandise is valued at £ and payment is due.

Yours faithfully,

(See WAREHOUSE-KEEPER'S CERTIFICATE OR RECEIPT.)

Section 5 of the Finance Act, 1905, enacts that the stamp duty on a delivery order charged by the Stamp Act, 1891, shall cease to be chargeable. (See FACTORS ACT, WARRANT FOR GOODS.)

DEMAND DRAFT. (See BANKER'S DRAFT.)

DEMISE. A word used to express the granting of a lease. (See MORTGAGE.)

DEMONETISE. When a coin is officially withdrawn from circulation it is said to be demonetised. Pre-Victorian gold coins were demonetised when they were withdrawn from circulation under the Coinage Act of 1889, and the Royal Proclamation of 1890. Such a demonetised coin is no longer legal tender.

DENOTED. A deed is said to have been denoted when it is impressed with a denoting stamp. (See DENOTING STAMPS.)

DENOTING STAMPS. The Stamp Act, 1891, Section 11, provides that—

"Where the duty with which an instrument is chargeable depends in any manner upon the duty paid upon another instrument, the payment of the last-mentioned duty shall, upon application to the Commissioners

and production of both the instruments, be denoted upon the first-mentioned instrument in such manner as the Commissioners think fit." (See MORTGAGE.)

The denoting stamp states the amount of the stamp which appears on the original or primary deed.

A denoting stamp is not required on the counterpart of a lease. (See Section 72, Stamp Act, 1891, under DUPLICATE.)

(See Section 42, Finance Act, 1920, under CONVEYANCE.)

From 1st September, 1931, an instrument transferring land must bear a stamp denoting that it has been produced to the Commissioners of Inland Revenue. See Section 28 of the Finance Act, 1931, under TITLE DEEDS. (See COLLATERAL STAMPING.)

DEPONENT. A person who makes an affidavit to any statement of fact, or who gives evidence upon oath.

DEPOSIT ACCOUNTS. Accounts opened for the purpose of earning interest as opposed to current or drawing accounts opened for the purpose of being operated on by cheques.

The issue of deposit receipts (*q.v.*) when a deposit account is opened or a withdrawal made has been largely superseded by the use of deposit pass books, in which deposits and withdrawals are entered.

In some banks deposit books are serially numbered and entered in a register on issue; the book must be produced on lodgments and withdrawals, the relative entry bearing the initials of the two officers concerned. Special credit slips are used for payments-in and special forms of receipt for withdrawals, bearing, where the sum is £2 or over, a 2d. stamp, unless the transaction is a book entry in the shape of a transfer to the customer's current account. In some banks unnumbered deposit books are used, and their production is not essential for deposits or withdrawals. This is the custom where the deposit accounts are frequently worked, and the deposit books are used like current account pass books or statements, being left at the bank to be written up at intervals. Generally speaking, the drawing of cheques on deposit accounts is not permitted except by special arrangements, but in the North of England there is a certain type of deposit account which approximates to a small current account on which not more than six cheques in favour of third parties may be drawn each year.

The rate of interest allowed on deposits used to depend on the district concerned. In London, what is known as the London Joint Stock Bank Deposit Rate operated, being 2 per cent below Bank Rate. (At the present time—1954—Bank Rate being 3 per cent, London Deposit Rate is 1½ per cent.) Outside London, the normal deposit rate used to be a fixed one of 2½ per cent. In times of high Bank Rate, the country depositor was at a disadvantage compared with the London depositor, but when Bank Rate got into the region of 4 per cent, the advantage was with the country depositor. Since the low Bank Rate of 2 per cent, the country rate has followed the London rate.

The London Deposit Rate used to be known as the "seven day rate" as it was applicable to deposits withdrawable at seven days' notice. The call rate was ½ per cent less and applied to money withdrawable on demand. Deposits getting more than London Deposit Rate were usually at ten or fourteen days' notice. In the country, except where special bargains were made for large sums, deposits for the most part were at call, unless taken by way of deposit receipt.

The rate prevailing at any time is now universal throughout the country and deposit balances are subject to a minimum period of notice of twenty-one days.

Fixed deposits are sometimes arranged for a fixed sum for a fixed time at a fixed rate. Usually interest is calculated at half-yearly intervals. Practice differs as to whether it is on a simple or compound basis. In some cases it is shown in the interest column of the deposit ledger as a balance until the depositor withdraws it. This is invariably the case with deposit receipts. In other cases it is applied to principal each interest period. Frequently depositors with current accounts have the interest transferred to the current account when due.

Interest is not usually allowed on deposits made for less than a month. Where deposits are taken subject to notice, and a withdrawal is requested on demand, it is usual to deduct interest for the number of days' notice in question. (See CALL RATE, DEPOSIT RATE, DEPOSIT RECEIPT, FIXED DEPOSIT, INTEREST ON DEPOSITS.)

As to attachment by garnishee proceedings, see GARNISHEE ORDER.

As to death and joint depositors see DEATH OF CUSTOMER and JOINT ACCOUNTS.

DEPOSIT LEDGER. The ledger in which deposit accounts are kept irrespective of whether receipts or pass books are issued.

(Sometimes a separate ledger is kept for deposit receipts.)

The ledger has columns for the number of the receipt or deposit book and separate columns for entering interest when calculated, showing the balance due where interest accrues instead of being applied to principal.

The balances of the deposit ledger are extracted periodically and agreed with the total of "Deposit Accounts" in the impersonal or general ledger.

DEPOSIT OF MORTGAGE. (See SUB-MORTGAGE.)

DEPOSIT OF TITLE DEEDS. (See EQUITABLE MORTGAGE.)

DEPOSIT RECEIPT. A receipt given by a banker where moneys are lodged on deposit account and no pass book is issued. It will express the money to be repayable at a certain number of days' notice or at call, or at the end of a fixed period. The receipt must be produced when a withdrawal is made, and if some but not all of the deposit is withdrawn, the receipt is usually cancelled and a fresh one issued: in some cases, however, the withdrawal is indorsed on the back of the receipt. A form of receipt is printed on the back of the receipt in respect of withdrawals and must be signed by the depositor. It will require a 2d. stamp if for £2 or over. The deposit receipt itself issued by the bank is exempt from stamp duty by the Stamp Act, 1891. (See RECEIPT.)

Deposit receipts are not transferable and are usually so marked; neither are they negotiable. But the debt represented thereby is capable of assignment and a banker would have to pay the assignee on being given notice of assignment. Where a deposit receipt is lost, a new one is issued against the completion of an indemnity, although it would appear that a banker is not entitled to this, as the document is not a negotiable instrument.

DEPRECIATED CURRENCY. If a sovereign, or other coin, does not contain the weight of metal, as prescribed by law, it is said to be "depreciated."

If a bank note passes current for less than the amount of the note, the note is said to be "depreciated." (See COINAGE and DEVALUATION.)

DEPRECIATION. "The term employed by accountants to indicate the gradual and inherent diminution both in the value and the usefulness of those assets which by reason of their nature and uses cannot endure for ever" (Cropper, *Book-keeping and Accounts*, 15th Edition).

Depreciation arises not only by reason of assets becoming outworn, but also on account of obsolescence.

Usually depreciation is effected by writing off each year a fixed percentage of the original cost to the debit of profit and loss account. Alternatively, a fixed percentage of the balance of the asset account each year is written off.

With regard to general machinery, it is said that a 7½ per cent rate should be sufficient to provide for ordinary wear and tear, or 10 per cent if the conditions of working are unusually trying; in the case of freehold buildings, apart from the land, from 1 to 2 per cent, boilers 10 per cent, and shafting 5 per cent.

Sometimes a policy of assurance is taken out to secure repayment, at a date when the asset's usefulness is finished, of the original cost of such asset. Wasting leases are usually safeguarded by this method.

DESTROYED BANK NOTE. Where notes have been partly or wholly destroyed, their value can be recovered from the bank which issued them, provided that full particulars, including the numbers, are supplied, and that the bank is otherwise satisfied. The bank will require a sufficient indemnity to be given before paying notes which are stated to have been destroyed. See the law cases under BANK OF ENGLAND NOTES. (See LOST BANK NOTE, MUTILATED NOTES.)

DEVALUATION. The reduction of the official par value (usually expressed in terms of weight of gold) of the legal unit of the currency. Members of the International Monetary Fund (*q.v.*) may not change the par values of their currencies except as provided by its Rules. On 18th September, 1949, the pound sterling was devalued, the par value being reduced from 3·58134 grams of fine gold (403 U.S. cents) to 2·48828 grams of fine gold (280 U.S. cents).

Formerly, when gold coins were employed as currency, devaluation would have involved a reduction in the gold (or other precious metal) content of the coinage; but this question rarely arises to-day.

DEVISEE. The person to whom "real" property is left, or devised, in a will, is called the devisee. The person who takes all the real property remaining after the devisees have received their shares is called the residuary devisee. (See LEGATEE, REAL ESTATE.)

DIFFERENCES. The sums paid or received by a speculator in stocks and shares

when a transaction is carried, or continued, from one account to another. If a speculator bought £1,000 worth of stock at £100 and the price fell so that the making-up price was fixed at 99, he would, on the transaction being continued, pay the difference of £10 to his broker, but if, on the other hand, the making-up price was fixed at £101 he would receive the difference of £10 from the broker. (See STOCK EXCHANGE.)

DIMINUTION IN VALUE. If a certain quantity of gold will purchase so much silver, then if the supply of silver increases so that the same gold will purchase more silver, the silver has suffered a "diminution in value," or in other words has depreciated. (See MONEY.)

DIRECTOR OF PUBLIC PROSECUTIONS. Where as a result of a report from a Board of Trade inspector or a liquidator, the Director of Public Prosecutions institutes proceedings against the officers of a company, he can require the company's banker to give information concerning the company's account. (Companies Act, 1948, Sections 169 (2) and 334 (5).)

DIRECTORS. Members of a joint stock company appointed to conduct its affairs. They may be appointed in the first instance by name in the articles, or more usually by the signatories to the memorandum in accordance with express power given therein. Subsequently they are usually appointed by the shareholders in general meeting. A person is not capable of being appointed a director of a company by the articles, and cannot be named as a director or proposed director in any prospectus or statement in lieu of prospectus, unless before the registration of the articles or the publication of the prospectus or filing of the statement in lieu of prospectus he has signed and filed with the Registrar of Companies a consent in writing to act as such director and either signed the memorandum for a number of shares not less than his qualification (if any), or signed and filed with the Registrar a contract to pay for his qualification shares (if any), or taken and paid or agreed to pay for such qualification shares, or sent to the Registrar a statutory declaration that such shares are registered in his name. (Companies Act, 1948, Section 181.)

The powers of directors are limited to the provisions of the memorandum and articles of association of the company.

Directors have been called trustees for the company, but in *Smith* v. *Anderson* (1880), 15 Ch. D. 247, Lord Justice James said: "A trustee is a man who is the owner of the property, and deals with it as a principal, as owner, and as master, subject only to an equitable obligation to account to some persons to whom he stands in the relation of trustee, and who are his *cestuis que trustent*. The same individual may fill the office of director and also be a trustee having property, but that is a rare, exceptional, and casual circumstance. The office of director is that of a paid servant of the company. A director never enters into a contract for himself, but he enters into contracts for his principal, that is, for the company of whom he is a director, and for whom he is acting. He cannot sue on such contracts, nor be sued on them, unless he exceeds his authority."

Jessel, M.R., said (in *In re Forest of Dean Coal Company* (1879), 10 Ch.D. 450): "Directors have sometimes been called trustees or commercial trustees, and sometimes they have been called managing partners; it does not matter much what you call them, so long as you understand what their true position is, which is that they are really commercial men managing a trading concern for the benefit of themselves and of all the other shareholders in it. They are bound, no doubt, to use 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. But where without fraud and without dishonesty they have omitted to get in a debt due to the company by not suing within time, or because the man was solvent at one moment and became insolvent at another, I am of opinion that it by no means follows as a matter of course, as it might in the case of ordinary trustees of trust funds or of a trust debt, that they are to be made liable."

In *re Brazilian Rubber Plantations Co., Ltd.* (1910), 103 L.T. 697, it was held that "A director's duty requires him to act with such care as is reasonably to be expected from him, having regard to his knowledge and experience. He is not bound to bring any special qualification to his office, but if he is acquainted with the particular business carried on by the company, he must give the company the advantage of

his knowledge when transacting the company's business. He is not bound to take any definite part in the conduct of the company's business, but so far as he does undertake it he must use reasonable care in its dispatch. Such reasonable care must be measured by the care an ordinary man might be expected to take in the same circumstances on his own behalf. He is not responsible for errors of judgment."

See the case of *Dey* v. *Pullinger Engineering Co., Ltd.*, under COMPANIES.

The number of shares which a director must hold in the company to qualify him for the post of director, depends upon the terms of the articles of association. The Companies Act, 1948, does not provide for any special qualification.

Table A, Article 77, provides that in default of a qualification being fixed by the company in general meeting, none shall be required.

A requisite for an official quotation on the London Stock Exchange is a share qualification of directors.

It shall be the duty of every director who is by the regulations of the company required to hold a specified share qualification, and who is not already qualified, to obtain his qualification within two months after his appointment or such shorter time as may be fixed by the regulations of the company. The office of director shall be vacated if he does not obtain his qualification within that time, or if after the expiration of such period he ceases at any time to hold his qualification. (Section 182.)

Every company must keep a register of the names, any former Christian name or surname, nationality, addresses, and occupations of its directors and secretaries, and furnish a copy thereof to the registrar of companies and notify any changes. (Section 200.) (See REGISTER OF DIRECTORS.)

In a limited company the liability of the directors may, if so provided by the memorandum, be unlimited (Section 202).

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 (Section 203).

The balance sheet of a company must be signed by two directors, or if there is only one director, by that director. (Section 155). In the case of a banking company registered after 15th August, 1879, the balance sheet must be signed by at least three directors. (Section 155.) See that section under AUDITORS.

The following are a few of the rules where Table A of the 1948 Act applies: The directors may appoint one of their number to be managing director at such remuneration as they think fit and he shall not, while holding that office, be subject to retirement by rotation (Article 107).

The amount borrowed by the directors for the purposes of the company (otherwise than by the issue of share capital) shall not at any time exceed the issued share capital without the sanction of the company in general meeting, apart from temporary loans obtained from the company's bankers. No lender or other person dealing with the company shall be concerned to see or inquire whether this limit is observed (Article 79).

Every director present at a meeting or committee of directors shall sign his name in a book kept for that purpose (Article 86).

Every year at the annual general meeting one-third of the directors for the time being, or if their number is not three or a multiple of three, then the number nearest to one-third, shall retire from office. The directors to retire shall be those who have been longest in office since their last election. A retiring director shall be eligible for re-election. (Articles 89, 90, 91.)

A minute book of all proceedings of directors must be kept. (See MINUTES.)

Any casual vacancy may be filled up by the directors. (See COMPANIES, MINUTES.)

The annual returns of a company must include the name, address, nationality, occupation, age, and particulars of other directorships of each director. (See Sixth Schedule, Part II, Companies Act, 1948.)

Every company registered on or after 1st November, 1929 (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. (Section 176.)

Every company shall have a secretary and a sole director shall not also be secretary. (Section 177.)

Section 190 prohibits the making of loans by a company to a director or to a director of its holding company. Likewise the giving of a guarantee by a company to secure advances by other people to such parties is prohibited.

This provision does not apply to an exempt private company or to a subsidiary company whose director is its holding company. The section also does not apply where the loan or guarantee is for the purpose of enabling

the director to meet expenditure incurred for the purposes of the company or for the purpose of enabling him properly to perform his duties as an officer of the company. Even so, unless the prior approval of the company in general meeting is given, or failing this, is not given before the next following annual general meeting, the loan must be repaid or the guarantee terminated within six months. Likewise companies are exempt from the provisions of Section 190 where their ordinary business includes the making of advances or the giving of guarantees.

By Section 185 of the Companies Act, 1948, no person can be appointed a director of a company if he has attained the age of 70. A director automatically relinquishes his office at the conclusion of the annual general meeting next after he attains the age of 70. These prohibitions do not apply to directors appointed or approved by the company in general meeting and are, moreover, subject to what the company's articles prescribe. The section also does not apply to a private company.

By Section 184, a director may be removed from office by ordinary resolution of the company before the expiration of his period of office and notwithstanding anything in its articles or any service agreement. Special notice must be given of the resolution to be moved for such purpose.

A director who is, in any way, whether directly or indirectly, interested in a contract with the company shall declare the nature of his interest at a meeting of the directors. Nothing 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. (See Section 199.)

Some articles provide that no director shall vote on any contract in which he is interested. Hence where a guarantee of directors is held for a company's account, care must be exercised if any of the company's assets are subsequently charged, for such additional security lessens the directors' guarantee liability, and to this extent they are personally interested in the charging of the assets. Hence unless the company's articles provide that the directors may vote on contracts in which they are personally interested, there is a danger that the charge will be held to be invalid. (*Victors, Ltd. (in liquidation)* v. *Lingard*, [1927] 1 Ch. 323.)

An undischarged bankrupt must not act as director, or take any part in the management of any company except with the leave of the Court by which he was adjudged bankrupt. (Section 187.)

DISABLED BOND. (See under STOCK EXCHANGE.)

DISCHARGE OF BANKRUPT. The regulations regarding the discharge of a bankrupt are contained in Section 26 of the Bankruptcy Act, 1914 (as amended by the Bankruptcy (Amendment) Act, 1926)—

"(1) A bankrupt may, at any time after being adjudged bankrupt, apply to the court for an order of discharge, and the court shall appoint a day for hearing the application, but the application shall not be heard until the public examination of the bankrupt is concluded. The application shall, except when the court in accordance with rules under this Act otherwise directs, be heard in open court.

"(2) On the hearing of the application the court shall take into consideration a report of the official receiver as to the bankrupt's conduct and affairs (including a report as to the bankrupt's conduct during the proceedings under his bankruptcy), and may either grant or refuse an absolute order of discharge, or suspend the operation of the order for a specified time, or grant an order of discharge subject to any conditions with respect to any earnings or income which may afterwards become due to the bankrupt, or with respect to his after-acquired property: Provided that where the bankrupt has committed any misdemeanour under this Act or any enactment repealed by this Act, or any other misdemeanour connected with his bankruptcy, or any felony connected with his bankruptcy, or where in any case any of the facts hereinafter mentioned are proved, the court shall either—

"(i) refuse the discharge; or

"(ii) suspend the discharge for such period as the court thinks proper; or

"(iii) suspend the discharge until a dividend of not less than ten shillings in the pound has been paid to the creditors; or

"(iv) require the bankrupt as a condition of his discharge to consent to judgment being entered against him by the

official receiver or trustee for any balance or part of any balance of the debts provable under the bankruptcy which is not satisfied at the date of the discharge, such balance or part of any balance of the debts to be paid out of the future earnings or after acquired property of the bankrupt in such manner and subject to such conditions as the court may direct, but execution shall not be issued on the judgment without leave of the court, which leave may be given on proof that the bankrupt has since his discharge acquired property or income available towards payment of his debts:

"Provided that, if at any time after the expiration of two years from the date of an order made under this Section the bankrupt satisfies the court that there is no reasonable probability of his being in a position to comply with the terms of such order, the court may modify the terms of the order, or of any substituted order, in such manner and upon such conditions as it may think fit.

"(3) The facts hereinbefore referred to are—

"(*a*) That the bankrupt's assets are not of a value equal to ten shillings in the pound on the amount of his unsecured liabilities, unless he satisfies the court that the fact that the assets are not of a value equal to ten shillings in the pound on the amount of his unsecured liabilities has arisen from circumstances for which he cannot justly be held responsible:

"(*b*) That the bankrupt has omitted to keep such books of account as are usual and proper in the business carried on by him and as sufficiently disclose his business transactions and financial position within the three years immediately preceding his bankruptcy:

"(*c*) That the bankrupt has continued to trade after knowing himself to be insolvent:

"(*d*) That the bankrupt has contracted any debt provable in the bankruptcy without having at the time of contracting it any reasonable or probable ground of expectation (proof whereof shall lie on him) of being able to pay it:

"(*e*) That the bankrupt has failed to account satisfactorily for any loss of assets or for any deficiency of assets to meet his liabilities:

"(*f*) That the bankrupt has brought on, or contributed to, his bankruptcy by rash and hazardous speculations, or by unjustifiable extravagance in living, or by gambling, or by culpable neglect of his business affairs:

"(*g*) That the bankrupt has put any of his creditors to unnecessary expense by a frivolous or vexatious defence to any action properly brought against him:

"(*h*) That the bankrupt has brought on or contributed to his bankruptcy by incurring unjustifiable expense in bringing any frivolous or vexatious action:

"(*i*) That the bankrupt has, within three months preceding the date of the receiving order, when unable to pay his debts as they become due given an undue preference to any of his creditors:

"(*j*) That the bankrupt has within three months preceding the date of the receiving order, incurred liabilities with a view of making his assets equal to ten shillings in the pound on the amount of his unsecured liabilities:

"(*k*) That the bankrupt has, on any previous occasion, been adjudged bankrupt, or made a composition or arrangement with his creditors:

"(*l*) That the bankrupt has been guilty of any fraud or fraudulent breach of trust.

"(5) For the purposes of this Section a bankrupt's assets shall be deemed of a value equal to ten shillings in the pound on the amount of his unsecured liabilities when the court is satisfied that the property of the bankrupt has realised, or is likely to realise, or with due care in realisation might have realised, an amount equal to ten shillings in the pound on his unsecured liabilities, and a report by the official receiver or the trustee shall be *prima facie* evidence of the amount of such liabilities."

A discharged bankrupt shall, notwithstanding his discharge, give such assistance as the trustee may require in the realisation of such of his property as is vested in the trustee, and if he fails to do so the court may, if it thinks fit, revoke his discharge. (s.s. (9).)

(See BANKRUPT PERSON, BANKRUPTCY.)

DISCHARGED BILL. A bill of exchange is discharged when payment is made in due course by or on behalf of the drawee or acceptor. (Bills of Exchange Act, 1882, Section 59 (1).) Where the acceptor of a bill is or becomes the holder of it at or after its maturity, it is discharged. (Section 61.) Where the holder of a bill at or after maturity absolutely and unconditionally renounces his rights against the acceptor, the bill is discharged. (Section 62.)

Where a bill is intentionally cancelled by the holder or his agent, the bill is discharged. (See Section 63, Bills of Exchange Act, 1882, under CANCELLATION OF BILL OF EXCHANGE. See other Sections under PAYMENT OF BILL.)

When a banker has paid his customer's acceptance he cancels the acceptor's signature in the same way as he would cancel the drawer's signature on a cheque. (See PAYMENT OF BILL.)

DISCLAIMER. A renunciation. An example of a disclaimer is found in connection with bankruptcy proceedings. By Section 54 of the Bankruptcy Act, 1914, a trustee may disclaim any portion of the bankrupt's land of any tenure which is burdened with onerous covenants, or any shares or stock in companies, or unprofitable contracts, etc. (See under CONVEYANCE.)

The term may be applied to other matters where a renunciation or repudiation is desired.

DISCOUNT. The amount of deduction which is allowed for immediate payment of a debt which is not yet due. From a banker's point of view, the usual way to regard discount is to look upon it practically as interest charged for a loan of the amount until the bill is due. One difference between interest for a loan and discount on a bill is that interest is payable, in the ordinary way, half-yearly, whereas discount is paid at the time the bill is discounted, e.g. if a loan of £1,000 is granted on 1st January at 5 per cent interest, the interest due at 31st December will be £50; but if a bill for £1,000 is discounted on 1st January at the same rate for twelve months the banker only pays over £950, the £50 being credited at once to his discount account, so that the banker practically obtains the same amount of interest for a loan of £950, when granted by discounting a bill, as he does upon an ordinary loan of £1,000; and his profit is therefore more than 5 per cent, in fact about $5\frac{5}{19}$ per cent, and besides he has the use of his profit (£50) for the twelve months.

The following table shows the difference in profit per cent per annum between lending money by way of interest and by way of discount—

Interest	Discount	Interest	Discount
1	1·010101	20	25·000000
2	2·040816	30	42·857142
3	3·092783	40	66·666666
4	4·166666	50	100·000000
5	5·263157	60	150·000000
6	6·382968	70	233·000000
7	7·526881	80	400·000000
8	8·695652	90	900·000000
9	9·890109	100	Infinite.
10	11·111111		

From this table it is seen that if a sum of £100 is lent at 20 per cent the lender would receive £100 at the end of a year plus £20 for interest, that is a profit of 20 per cent; but if he discounted a bill for £100 at the rate of 20 per cent he would advance only £80 and at the year end he would receive payment of £100, that is he would receive £20 for a loan of £80, or a profit of 25 per cent.

The rate at which a bill is discounted is partly dependent upon the Bank of England Rate, the length of time which will elapse before the bill matures, and the quality of the bill. If there is any doubt as to payment of the bill at maturity, the risk is taken into account by charging a higher rate than in the case of a bill which may be regarded as practically certain to be paid when due.

A banker's discount is different from a

true discount. A banker's discount is not really interest upon the actual amount advanced, but interest upon the amount that is to be repaid. True discount is ascertained, e.g. by finding what amount at 5 per cent will produce £100 in twelve months' time. £1 at 5 per cent will be £1 1s. at the end of a year, and if £1 1s. is the value of £1, it is found by proportion that £100 is the value at the end of the twelve months of £95 4s. 9½d. The true discount is therefore £4 15s. 2½d. (that is, 5 per cent on £95 4s. 9½d.), whilst the banker's discount is £5 (equal, as shown above, to a rate of, say, $5\frac{5}{19}$ per cent). (See also CASH DISCOUNT, TRADE DISCOUNT.)

DISCOUNT, AT A. When the market value of bonds, stocks, or shares is less than the nominal value, they are said to be at a discount. Where the market value is greater, they are at a premium. A share of £1, fully paid, which is selling at 19s. 6d., is an example of an investment which is at a discount, or 6d. below par value. (See PAR.)

As to a company's power to issue shares at a discount, see under SHARE CAPITAL.

DISCOUNT HOUSES. (See BILL BROKERS.)

DISCOUNT LEDGER. In the discount ledger an account is opened in the name of each customer for whom bills are discounted, and a note is made in the heading of the amount fixed as the discount limit. Each bill, as discounted, is entered in the correct account with the date when it is discounted. The acceptor's name is noted and the date when the bill is due; also the number on the bill which refers to the entry in the bill register is usually added. The amounts are entered in a column headed "acceptances," and when any bills mature the amounts are entered in a column headed "matured acceptances" and the balance is shown in the balance column.

When the balances of the discount ledger are extracted the total should agree with the balance of "Bills Discounted" account in the impersonal or general ledger.

When a bill is dishonoured, a note of the fact is usually made in red ink against the entry in the discount ledger.

The discount ledger may also show the liability of each person as acceptor or indorser on bills discounted for other customers.

DISCOUNT REGISTER. The same as bill register (*q.v.*).

DISCOUNTING A BILL. When a banker discounts a bill, he buys it outright for a sum less than its face value, the difference comprising discount based on the unexpired term of the bill. Sometimes the face value of the bill is credited to the customer's account and a debit charged to the account by way of discount; in other cases the net amount of the bill is credited to the account. The transaction is practically an advance on the security of the bill, the discount being, in effect, the interest charged for the loan until the maturity of the bill.

When trade bills are brought to a banker to be discounted, there are many points which require to be carefully observed in order that a banker may avoid having his case filled with bills which are unmarketable, or bills which may eventually produce endless trouble and probably disaster.

If a bill drawn by Jones on Brown is brought to be discounted, a banker will consider the position of the acceptor Brown. If Brown's account is at another bank, what sort of a banker's opinion is held regarding him, is the opinion a recent one, and how many other bills accepted by Brown are in the bill case? Have any of Brown's acceptances ever been dishonoured? If Jones is the person who wants the bill discounted, the banker will note the total amount of bills already discounted for him and the quality of them. A certain number of the bills may be dishonoured at maturity, and the question arises, will Jones's account admit of the bills on which there is a risk, being debited to it, if they are returned unpaid? It is also necessary for the banker to remember that he may hold in his case bills accepted by Jones which he has discounted for other customers.

If the parties to the bill are quite satisfactory, other points will arise in the banker's mind. Is the bill a genuine trade bill, that is, a bill accepted by Brown because he has received value for it from Jones, or has Brown accepted it merely for the accommodation of Jones, on the understanding that Jones himself must meet it at maturity? The banker may be informed that it is an accommodation bill when it is offered to him, or he may be left to find out that fact for himself. A scrutiny of Jones's account may show, perhaps, that a bill for practically the same amount appears regularly every three or six months, suggesting that it is the same bill which is being renewed time after time. Is there any cross drawing between Brown and Jones, that is does Brown accept bills for Jones and Jones accept them for Brown? Is the business between the two parties such as would justify Jones drawing on Brown? If Jones is an iron merchant, for example,

and Brown a grocer, it is not very likely that the bill would arise out of the ordinary course of business between an iron merchant and a grocer, and the banker is put on inquiry.

In the words of George Rae, in his *Country Banker*: "It is not the province of banking to discount bills, the proceeds of which are to provide the acceptors with fixed capital. A man may properly be drawn upon against goods, produce, or commodities which he is turning over in his business from day to day; but not against his buildings or machinery. These are not floating capital," Again: "A shipowner, or ship's husband, may properly be drawn upon for sails, or cordage, or stores supplied to ships, because there is a tangible fund in his incoming freights to meet this class of marine paper; but when he accepts against the hull of a ship, he passes the recognised limits of negotiable value, and his paper becomes discredited in the estimation of the bill market."

A bill which is payable to John Brown *only* should not be discounted, as the bill is not a negotiable instrument, and the banker could not, if necessary, sue upon it.

A banker who discounts a bill is a "holder for value" (*q.v.*) and at maturity he obtains the full proceeds. The banker has no lien on the customer's credit balance for the contingent liability on any maturing bills except by agreement. (See LIEN.) But where a customer is bankrupt, the banker may set-off a credit balance against the contingent liability, by virtue of Section 31, Bankruptcy Act, 1914. (See that Section under SET OFF.) This right of set-off against the contingent liability applies in the winding up of a company, but not in the case of the appointment of a receiver. (See RECEIVER, WINDING UP.)

The person for whom a bill is discounted must indorse it, as by indorsement he becomes one of the parties to the bill and liable thereon if the acceptor fails to pay it. If not indorsed or drawn by him, he is not liable on the bill, unless the bill proves to be a forgery, though he may become liable to the banker by custom or special agreement. (See DISHONOUR OF BILL OF EXCHANGE, TRANSFEROR BY DELIVERY.)

When an advance is made upon the deposit of a bill as security, the banker is a "holder for value" only to the extent of the sum he has lent upon it.

The discounter of a bill may, if he wish, re-discount it. Bill brokers frequently re-discount bills with bankers, and instead of indorsing each bill they usually give a guarantee to cover all the bills re-discounted, for example, "In consideration of your discounting for us any bills you may approve and think fit from time to time, we hereby guarantee the due payment of them as they respectively fall due." An agreement in this form was held (*in ex parte Bishop* (1880), 15 Ch.D. 400) to be equal to an indorsement of each bill by the brokers.

In the money market, Treasury Bills (*q.v.*) and bills or drafts which bear the names of houses of the highest standing, are classed as first-class bills, or first-class paper. Where the names are not so well known, or financially strong, the bills are called second or third class paper, as the case may be.

(See BILL REGISTER, DISCOUNT LEDGER, REBATE.)

DISENTAIL. To disentail was to bar or bring to an end an entail. Land was entailed when it was granted to a person and the heirs of his body. The deed barring an entail was called a disentailing deed, and the land thereafter might be dealt with at the will of the owner.

On 1st January, 1926, any legal estate tail then existing was by the Law of Property Act, 1925, converted into an equitable estate. (See ENTAILED ESTATE, SETTLED LAND.)

DISHONOUR OF BILL OF EXCHANGE. A bill is dishonoured either by non-acceptance or by non-payment. That is, where the person on whom a bill is drawn (the drawee) refuses to accept it, or where the person who, by accepting the bill (the acceptor), agreed to pay it, fails to do so on the day on which it is due, the bill is said to be dishonoured.

As to dishonour by non-acceptance, the Bills of Exchange Act, 1882, provides as follows—

"Section 42. When a bill is duly presented for acceptance and is not accepted within the customary time, the person presenting it must treat it as dishonoured by non-acceptance. If he do not, the holder shall lose his right of recourse against the drawer and indorsers."

A drawee is by that Section entitled to the "customary time," that is, until the close of business on the day following presentation for acceptance, within which to accept the bill or to refuse acceptance.

"Section 43. A bill is dishonoured by non-acceptance—

"(*a*) When it is duly presented for acceptance, and such an acceptance as is prescribed by this Act is refused or cannot be obtained: or

"(*b*) When presentment for acceptance is excused and the bill is not accepted.

"(2) Subject to the provisions of this Act, when a bill is dishonoured by non-acceptance, an immediate right of recourse against the drawer and indorsers accrues to the holder, and no presentment for payment is necessary."

"Section 18. A bill may be accepted—

"(2) When it is overdue, or after it has been dishonoured by a previous refusal to accept, or by non-payment:

"(3) When a bill payable after sight is dishonoured by non-acceptance, and the drawee subsequently accepts it, the holder, in the absence of any different agreement, is entitled to have the bill accepted as of the date of first presentment to the drawee for acceptance."

By Section 44—

"The holder of a bill may refuse to take a qualified acceptance, and if he does not obtain an unqualified acceptance may treat the bill as dishonoured by non-acceptance."

As to dishonour by non-payment, Section 47 provides—

"(1) A bill is dishonoured by non-payment (*a*) when it is duly presented for payment and payment is refused or cannot be obtained, or (*b*) when presentment is excused and the bill is overdue and unpaid.

"(2) Subject to the provisions of this Act, when a bill is dishonoured by non-payment, an immediate right of recourse against the drawer and indorsers accrues to the holder."

Notice of dishonour must be given. Section 48 provides as follows—

"Subject to the provisions of this Act, when a bill has been dishonoured by non-acceptance or by non-payment, notice of dishonour must be given to the drawer and each indorser, and any drawer or indorser to whom such notice is not given is discharged; Provided that—

"(1) Where a bill is dishonoured by non-acceptance, and notice of dishonour is not given, the rights of a holder in due course subsequent to the omission, shall not be prejudiced by the omission.

"(2) Where a bill is dishonoured by non-acceptance and due notice of dishonour is given, it shall not be necessary to give notice of a subsequent dishonour by non-payment unless the bill shall in the meantime have been accepted."

Notice to the various parties of the dishonour of a bill must be given in strict conformity with the regulations set forth in Section 49, otherwise the drawer and indorsers may be discharged. The Section is as follows—

"Notice of dishonour in order to be valid and effectual must be given in accordance with the following rules—

"(1) The notice must be given by or on behalf of the holder, or by or on behalf of an indorser who, at the time of giving it, is himself liable on the bill.

"(2) Notice of dishonour may be given by an agent either in his own name, or in the name of any party entitled to give notice whether that party be his principal or not.

"(3) Where the notice is given by or on behalf of the holder, it enures for the benefit of all subsequent holders and all prior indorsers who have a right of recourse against the party to whom it is given.

"(4) Where notice is given by or on behalf of an indorser entitled to give notice as hereinbefore provided, it enures for the benefit of the holder and all indorsers subsequent to the party to whom notice is given.

"(5) The notice may be given in writing or by personal communication, and may be given in any terms which sufficiently identify the bill, and intimate that the bill has been dishonoured by non-acceptance or non-payment.

"(6) The return of a dishonoured bill to the drawer or an indorser is, in point of form, deemed a sufficient notice of dishonour.

"(7) A written notice need not be signed, and an insufficient written notice may be supplemented and validated by verbal communication. A misdescription of the bill shall not vitiate the notice unless the party to whom the notice is given is in fact misled thereby.

"(8) Where notice of dishonour is required to be given to any person, it may be given either to the party himself, or to his agent in that behalf.

"(9) Where the drawer or indorser is dead, and the party giving notice knows it, the notice must be given to a personal representative if such there be, and with the exercise of reasonable diligence he can be found.

"(10) Where the drawer or indorser is bankrupt, notice may be given either to the party himself or to the trustee.

"(11) Where there are two or more drawers or indorsers who are not partners, notice must be given to each of them, unless one of them has authority to receive such notice for the others.

"(12) The notice may be given as soon as the bill is dishonoured and must be given within a reasonable time thereafter.

"In the absence of special circumstances notice is not deemed to have been given within a reasonable time, unless—

"(*a*) where the person giving and the person to receive notice reside in the same place, the notice is given or sent off in time to reach the latter on the day after the dishonour of the bill;

"(*b*) where the person giving and the person to receive notice reside in different places, the notice is sent off on the day after the dishonour of the bill, if there be a post at a convenient hour on that day, and if there be no such post on that day then by the next post thereafter.

"(13) Where a bill when dishonoured is in the hands of an agent, he may either himself give notice to the parties liable on the bill, or he may give notice to his principal. If he give notice to his principal, he must do so within the same time as if he were the holder, and the principal upon receipt of such notice has himself the same time for giving notice as if the agent had been an independent holder.

"(14) Where a party to a bill receives due notice of dishonour, he has after the receipt of such notice the same period of time for giving notice to antecedent parties that the holder has after the dishonour.

"(15) Where a notice of dishonour is duly addressed and posted, the sender is deemed to have given due notice of dishonour, notwithstanding any miscarriage by the post office."

In order to render the acceptor of a bill liable it is not necessary that notice of dishonour should be given to him. (Section 52 (3), see under PRESENTMENT FOR PAYMENT.)

Under certain circumstances the Act excuses non-notice of dishonour, or delay in giving notice. Section 50 provides—

"(1) Delay in giving notice of dishonour is excused where the delay is caused by circumstances beyond the control of the party giving notice, and not imputable to his default, misconduct, or negligence. When the cause of delay ceases to operate the notice must be given with reasonable diligence.

"(2) Notice of dishonour is dispensed with—

"(*a*) When, after the exercise of reasonable diligence, notice as required by this Act cannot be given to or does not reach the drawer or indorser sought to be charged:

"(*b*) By waiver express or implied. Notice of dishonour may be waived before the time of giving notice has arrived, or after the omission to give due notice:

"(*c*) As regards the drawer in the following cases, namely, (1) where drawer and drawee are the same person, (2) where the drawee is a fictitious person or a person not having capacity to contract, (3) where the drawer is the person to whom the bill is presented for payment, (4) where the drawee or acceptor is as between himself and the drawer under no obligation to accept or pay the bill, (5) where the drawer has countermanded payment:

"(*d*) As regards the indorser in the following cases, namely, (1) where the drawee is a fictitious person or a person not having capacity to contract and the indorser was

aware of the fact at the time he indorsed the bill, (2) where the indorser is the person to whom the bill is presented for payment, (3) where the bill was accepted or made for his accommodation."

As the result of several decisions, it has been considered that in all cases where, in consequence of the dishonour of bills or notes, made or become payable to bearer, a remedy arises on the consideration, the transferor is entitled to notice of dishonour.

The amount which a holder may recover in an action on a dishonoured bill is prescribed in Section 57—

"Where a bill is dishonoured, the measure of damages, which shall be deemed to be liquidated damages, shall be as follows—

"(1) The holder may recover from any party liable on the bill, and the drawer who has been compelled to pay the bill may recover from the acceptor, and an indorser who has been compelled to pay the bill may recover from the acceptor or from the drawer, or from a prior indorser—

"(*a*) The amount of the bill:

"(*b*) Interest thereon from the time of presentment for payment if the bill is payable on demand, and from the maturity of the bill in any other case:

"(*c*) The expenses of noting, or, when protest is necessary, and the protest has been extended, the expenses of protest.

"(2) In the case of a bill which has been dishonoured abroad, in lieu of the above damages, the holder may recover from the drawer or an indorser, and the drawer or an indorser who has been compelled to pay the bill may recover from any party liable to him the amount of the re-exchange with interest thereon until the time of payment.

"(3) Where by this Act interest may be recovered as damages, such interest may, if justice require it, be withheld wholly or in part, and where a bill is expressed to be payable with interest at a given rate, interest as damages may or may not be given at the same rate as interest proper."

The following is a specimen of a form which may be used in giving notice of dishonour—

British Bank, Ltd.,
Leeds 19 .

Please take notice that the bill for £100 upon John Brown, of King Street, Leeds, drawn (or indorsed) by you, dated , at months' date, due 19 , and payable at , upon which you are liable as drawer (or indorser), has been dishonoured by non-acceptance (or non-payment), and we request immediate payment thereof, with expenses.

To John Jones, , Manager.
English Street, Leeds.

Where an inland bill has been dishonoured it may, if the holder think fit, be noted for non-acceptance or non-payment, as the case may be, but it is not necessary to note such a bill in order to preserve recourse against the drawer or indorsers; neither is there any need to protest an inland bill, and it is not usually done. (See NOTING.)

Where a foreign bill, appearing on the face of it to be such, has been dishonoured by non-acceptance, it must be duly protested for non-acceptance, and where such a bill, which has not been previously dishonoured by non-acceptance, is dishonoured by non-payment, it must be duly protested for non-payment. (See PROTEST.) The bill may be noted on the day of dishonour and must be noted not later than the next succeeding business day. (See BILLS OF EXCHANGE (TIME OF NOTING) ACT, 1917.) The protest may be extended later. A bill drawn in the Republic of Ireland and payable in England is a foreign bill within the meaning of the Bills of Exchange Act, and if dishonoured by non-acceptance or non-payment, must therefore be noted or protested. (See under FOREIGN BILL.)

Protest is essential before presentment of a bill for acceptance for honour, or payment for honour.

Noting or protest does not do away with the necessity of giving the notices of dishonour to drawer and indorsers. As soon as payment is refused on the due date, a holder may give notice of dishonour. He need not necessarily wait till the end of the day before doing so. The holder of a dishonoured bill should give notice at once to all parties liable on the bill, otherwise, if he merely gives notice to the indorser from whom he received the bill and that indorser fails to give due notice to the person from whom he received it, that person and any

persons prior to him would be discharged, and the holder would have only the indorser (to whom notice was given) and the acceptor (who does not require notice) from whom to recover the amount of the bill.

Where a bill is to be noted, there is nothing to prevent it being noted as soon as dishonoured. An action cannot be commenced till after the end of the due date. In *Kennedy* v. *Thomas*, [1894] 2 Q.B. 759, where an action was brought by the holder of a dishonoured bill upon the last day of grace, it was dismissed as premature.

Where a bill, which a banker has discounted for a customer, is dishonoured, the banker should debit it to the customer's account and advise him at once (returning the bill to him), so that he may be in time to give the required notices to prevent the release of other parties. But if the account does not justify the dishonoured bill being charged to it, the banker should retain the bill and debit it to an account called "Dishonoured Bills," or "Overdue Bills," and at once send notice of dishonour, and request for payment, to all the parties to the bill.

If the bill was not indorsed by the customer for whom it was discounted, he is not liable on the bill in the event of its dishonour, unless by special agreement.

A note of the dishonour should be recorded in the discount ledger and the banker's opinion book.

Where a bill which has been paid in for collection is dishonoured, the banker should at once give notice to his customer. In collecting a bill, the banker acts as agent for his customer (the principal), and by Section 49, s.s. 13, an agent may either himself give notice to the parties liable on the bill or he may give notice to his principal.

If a banker wrongfully dishonours a bill or cheque he will be liable in an action by his customer for damages, and if he dishonours it because certain cheques paid to the credit of his customer have not been cleared, he may also be held liable in damages if it has been the banker's practice to allow the customer to treat uncleared cheques as cash.

A banker has no lien on a customer's credit balance for the contingent liability on any maturing bills except by agreement. (See LIEN.)

As it is a serious matter to damage a customer's credit by dishonouring a bill or cheque which ought to be paid, a banker will naturally make quite sure of the position before returning it. He should ascertain that everything has been credited to the account and that the balance has been correctly extended. When a cheque is returned simply from some irregularity in the document itself, such as an incorrect indorsement, an alteration, a difference in amount, or any other similar kind of cause, the banker should make the reason quite clear so that no reflection may be cast upon the customer's credit. A cheque returned for a technical irregularity should never be referred to as a "dishonoured" cheque. A cheque marked "refer to drawer" means, as a rule, that the drawer has not sufficient funds in his account to meet it. It is customary (except where a special arrangement exists) to debit charges half-yearly and until the usual time for debiting them has arrived, a cheque should not be dishonoured by anticipating the item for charges, or debiting them at an unusual time.

A delay in payment of a cheque is justified when there is a reasonable ground for suspicion that it has been tampered with. (See the reference to *London Joint Stock Bank, Ltd.* v. *Macmillan and Arthur* under PAYMENT OF CHEQUE.)

Wrongful dishonour may, as stated above, render a banker liable to pay damages. In the case of *Rolin* v. *Steward* (1854), 23 L.J.C.P. 148, it was said by Mr. Justice Williams: "Although no evidence is given that the plaintiff has sustained any special damage, the jury ought not to limit their verdict to nominal damages, but should give such temperate damages as they may judge to be a reasonable compensation for the injury the plaintiff must have sustained from the dishonour of his cheque."

In *Marzetti* v. *Williams* (1830), 1 B. and Ad. 415, where a sum of £40 had been paid to credit about one o'clock and a cheque was dishonoured shortly after three (although the banker had, after including the amount paid in at one, sufficient funds of the drawer with which to pay the cheque), Mr. Justice Taunton said: "The jury have found that when the cheque was presented for payment a reasonable time had elapsed to have enabled the bankers to enter the £40 to the credit of the plaintiff, and, therefore, that they must or ought to have known that they had funds belonging to him. That was sufficient to entitle the plaintiff to recover nominal damages, for he had a right to have his cheque paid at the time when it was presented, and the bankers were guilty of a wrong by refusing to pay it. Independently of other considerations, the credit of the plaintiff was likely to be injured by the

refusal of the defendants to pay the cheque. . . . The case put in the course of the argument, of the holder of a cheque being refused payment, and called back within a few minutes and paid, is an extreme case, and a jury probably would consider that equivalent to instant payment."

In *Gibbons* v. *Westminster Bank, Ltd.*, [1939] 3 All E.R. 577, where a customer's rent cheque for £8 16s. had been wrongfully dishonoured, nominal damages of £2 were awarded.

The judge said: "The authorities which had been cited all laid down that a trader whose cheque was wrongfully dishonoured was entitled to recover substantial damages. It had never been held that that exception to the general rule with regard to the measure of damages for breach of contract extended to anyone who was not a trader. . . . A person who was not a trader was not entitled to recover substantial damages for the wrongful dishonour of his cheque unless he pleaded and proved special damage."

When a cheque which has been credited to a customer's account is returned unpaid, a banker debits it to that account if the balance permits of it, and gives him notice of dishonour. If the cheque is returned for an irregularity which the banker can confirm without reference to his customer, he should nevertheless give his customer notice of dishonour; otherwise if it is again returned on re-presentation, the customer may claim that he has treated it as paid. When a cheque which has been returned is recalled by wire, it is advisable for a banker to advise his customer of the circumstance, in order that he may be on his guard.

Cheques paid to credit are often (when payable to bearer or indorsed in blank) not indorsed by the customer, but the fact that the cheque was not indorsed by the customer when placed to his credit does not affect at all the banker's right to debit his account with it when returned dishonoured.

A cheque received in the Local Exchange must, if not to be paid, be returned on the day of receipt.

When it is desired to recall a dishonoured cheque by wire, the words should be, say, "cheque would be paid if in our hands now and in order." These words would not render the banker liable to pay the cheque if there was some obstacle to its payment when received.

If the customer pays in, or "earmarks," a sum specifically to meet the dishonoured cheque, the banker must retain that sum as instructed. (See APPROPRIATION OF PAYMENTS.)

When a banker dishonours a customer's cheque, the balance on the drawer's account is available to pay any cheque, which may be presented subsequently, up to the amount of the balance or sum available, but in Scotland, when a cheque is dishonoured, any funds that there may be in the drawer's account are attached in favour of the person presenting the cheque, the amount being transferred by the banker to a suspense account. (Bills of Exchange Act, 1882, Section 53.)

A cheque paid to the credit of a customer of the X & Y Bank, drawn by another customer of the same bank, may be returned on the following day. Even if the paying-in-slip counterfoil is initialed by the bank cashier, as it often is, it would not affect the banker's right to return the cheque. The banker is not obliged to inform the person paying in to credit a cheque drawn on the banker by another customer, that the cheque may not be paid. He may take the cheque without comment and, after he has looked into the position of the drawer's account, may return it dishonoured. The banker who receives such a cheque for collection does so merely as the agent of the customer paying it in and has the usual time of an agent in which to deal with it, as though it were a cheque on another banker. (*Boyd* v. *Emmerson* (1834), 2 A. & E. 184.) (See PRESENTMENT FOR PAYMENT.)

Where a customer has two accounts, one in credit and one overdrawn, and the credit balance is regarded as a set-off to the debit, cheques on the credit account may be dishonoured if their payment would reduce the balance below the amount owing on the overdrawn account, unless there is some arrangement or custom to the contrary.

Where a customer has a deposit account and a current account, and cheques are drawn upon the account in excess of the balance, a banker usually pays such cheques so long as they do not exceed the amount of the deposit account. Should such cheques be inadvertently dishonoured, the banker would, probably, not be liable, seeing that deposit accounts are not intended to be drawn against by cheque.

(See further information under ACCEPTANCE FOR HONOUR, PAYMENT OF BILL, PAYMENT OF CHEQUE, PROTEST.)

(See BILL OF EXCHANGE.)

DISSOLUTION OF COMPANY. A company is dissolved when winding-up proceedings

have come to an end (see WINDING UP), or when the Registrar of Companies has struck the company's name off the Register as defunct. (See DEFUNCT COMPANY.)

DISSOLUTION OF PARTNERSHIP. The death, bankruptcy, or retirement of a partner dissolves the firm, and if the remaining partners continue in business a new partnership is created. A partnership may also be dissolved by mutual agreement or by order of the Court. (See PARTNERSHIP.)

DISTRICT COUNCILS. (See RURAL DISTRICT COUNCIL, URBAN DISTRICT COUNCIL.)

DISTRINGAS. (Latin, that you distrain.) The writ of distringas was abolished in 1883. In place thereof, the Rules of the Supreme Court (Order XLVI, Rules 2–11) provide that any person claiming an interest in stocks or shares may, on filing an affidavit in a specified form in the Central Office of the Supreme Court or in any District Registry, together with a notice also in specified form, procure an office copy of the affidavit and a duplicate of the filed notice authenticated by the seal of the Central Office or District Registry, and serve these documents on the company concerned. Thereafter the company must give eight days' notice to the party serving the notice before passing a transfer of the stock or shares concerned or paying a dividend to the registered holder. This interval will give the interested party time to apply to the Court for an injunction restraining the company from passing the transfer or paying the dividend. The method is not usually employed by a banker to protect himself in respect of untransferred shares held as security, but if money is lent on the mortgage of a reversionary interest in an estate comprising stocks and shares, a notice in lieu of distringas is sometimes served on the several companies as a precaution against the trustees dealing with the securities to the bank's detriment.

Notice in lieu of distringas (*q.v.*) must be distinguished from a Charging Order (*q.v.*).

DIVIDEND. The share of profits distributed to the shareholder or stockholder of a company. The dividend may be payable at a fixed rate (as on preference shares), or the rate may be, as in the case of ordinary shares, dependent upon the profits that are made. It may also be cumulative. (See CUMULATIVE DIVIDEND.)

The clauses in Table A of the Companies Act, 1948 (see Section 8 under ARTICLES OF ASSOCIATION), with respect to dividends are as follow—

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."

Dividends must be paid only out of profits, but a company has power, in certain special cases, to pay interest out of capital. (Section 65 of the Companies Act, 1948.)

Interest upon debentures is commonly regarded as a dividend, but it is really interest upon a loan, and must be paid by the company quite irrespective of any question of profits.

A dividend is also the name given to the amount which is paid to creditors from a bankrupt's estate. (See COMPANIES, COUPON, DIVIDEND WARRANT, DIVIDENDS (IN BANKRUPTCY), INCOME TAX, SHARE WARRANT.)

DIVIDEND MANDATE. A written order from a shareholder requesting the company of which he is a member to send his dividends direct to his banker to be placed to the credit of his account. The advantages of having dividends and interest paid direct to a bank are: Reduced risk of the warrants being lost or mislaid; saving of trouble in signing and dispatching warrants to a bank after receipt; and obtaining earlier credit in the account.

The request for dividends to be dealt with in this way may be in the following form—

Address.....

.....

.....19...

To the Secretary of

THE "A" COMPANY, LTD.

$\frac{\text{I}}{\text{We}}$ hereby request that you will transmit by post and pay the Dividends and Interest from time to time payable on the Stock and Shares standing registered, or which may hereafter stand registered, in $\frac{\text{my}}{\text{our}}$ name(s) in the books of your Company, to .....

whose receipt shall be your full and sufficient discharge.

Signature of Proprietor.....

If the shares stand in several names the mandate should be signed by each person.

The order does not require a stamp.

When the number of warrants payable to any one bank justifies their discharge by a single cheque, a banker's statement in lieu of a warrant may be sent by the company to the head office of the bank, with a detailed list and cheque for the total amount thereof for allocation to the customers as therein indicated. The statement (which is in place of the top portion of an ordinary dividend warrant) must be given by the banker to his customer. The list and statement (as given in the *Journal of the Institute of Bankers*) may be in the following form—

Bankers' List—

THE "A" COMPANY, LTD.

No.....

.... No.....A/c. Half-year to.....

To.....

I have the pleasure to hand you cheque for £ : : , being the amount payable to you on behalf of, and in accordance with instructions received from, the following proprietors.

Secretary.

No. of Warrant	For Account of	Branch	Net Amount of Dividend		

Bankers' Statement—

THE "A" COMPANY, LTD.

INTEREST ON 4% DEBENTURE STOCK,
Half-year to June 30, 19 .

Memorandum of particulars of Interest for half-year ended June 30, 19 , payable to the Bankers under authority lodged with the Company, in respect of the Proprietors' holding on the inst.

No. A/c of.....
.....Branch.

Debenture Stock £.....			
at 4 per cent per annum .	£	:	:
Less Income Tax .	£	:	:
	£	:	:

Exd.....

I hereby certify that there has been deducted for Income Tax the amount stated above, and that the Tax so deducted will form part of the amount to be paid by the Company to the Commissioners of Inland Revenue.

Proprietors claiming Allowance of Income Tax are informed that the Inland Revenue Department will accept this Certificate as a Voucher.

London Wall, E.C.
30th June, 19 .

Secretary.

N.B.—Notwithstanding the transmission of Interest Warrants to the Bankers direct, it is very desirable that Proprietors should, without delay, notify any change of residence, advising the Company from time to time of their full Postal Address in order that communications, other than Interest Warrants, may not fail to reach them.

This statement to be forwarded to the Proprietor by the Bankers.

DIVIDEND COUNTERFOIL. The common name given to the top portion of a dividend warrant which shows the gross amount of dividend, the rate and amount of income tax deducted, and the net amount of dividend. The dividend "top" is retained by the shareholder and used as a voucher when claiming, if so entitled, a repayment of tax from the Inland Revenue Commissioners. The British Bankers' Association resolved in June, 1946, that the maximum size of counterfoils should be 8 inches by 4 inches and the minimum size 6 inches by 3 inches. The front of the counterfoil must be reserved for the gross and net amount of dividend, the name and address of the branch bank if paid under mandate, the name of the stock or share holder or of the account to be credited, and the form of certificate of deduction of tax. Explanations as to tax deductions or other matters must be on the back of the counterfoil. (See DIVIDEND MANDATE, DIVIDEND WARRANT.)

DIVIDEND WARRANT. An order, or warrant, issued by a company, and drawn upon its bankers, in favour of a member of the company, for payment of the dividend due to him upon his holding of shares or stock in the company.

The British Bankers' Association resolved in June, 1946, that dividend warrants should be of a maximum size of 8 inches by 4 inches and a minimum size of 6 inches by 3 inches.

The amount of the warrant in figures must be on the right-hand side immediately above the signature of the registrar or other issuing official.

Debenture stocks are loans to a company and the interest thereon is paid by interest warrant.

Section 95 of the Bills of Exchange Act, 1882, is : "The provisions of this Act as to crossed cheques shall apply to a warrant for payment of dividend." (See CROSSED CHEQUE.)

In *Slingsby and Others* v. *Westminster Bank, Ltd.* (K.B.D., *The Times*, 15th October, 1930), Finlay, J., in the course of his judgment said: "The point is whether 'dividend' in the Act of 1882 is used in the narrower sense as meaning that part of the profits of a company divisible among its shareholders, or in a broader sense as meaning that which is divided. I think that the broader construction is to be preferred. I arrive at this conclusion on the construction of Section 95 of the Act of 1882." In that case the document before Finlay, J., was a warrant for interest on War Loan and he held that that document was a dividend warrant within Section 95. He pointed out that "dividend" was the word used by the Legislature to signify interest on Government stock. It cannot, however, be assumed from that decision that interest warrants issued by companies are dividend warrants within the meaning of Section 95.

Section 97 (3) provides—

"Nothing in this Act or in any repeal effected thereby shall affect—

"(*a*) The validity of any usage relating to dividend warrants, or the indorsements thereof."

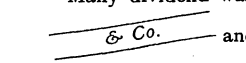
There is usually a space provided at the foot of dividend warrants for the proprietor's signature.

A dividend warrant must be signed by the person to whom it is payable, and, unless authorised by the company, a per procuration signature should not be accepted.

Where a dividend warrant is payable to several persons, it is the custom to pay it on being signed by the first named.

Where a warrant is payable to, say, John Brown, with a note thereon "A/c John Brown and John Jones," it should go to the credit of the joint account and not to J. Brown's private account.

Many dividend warrants are crossed



and the effect is the same as when a cheque is so crossed (Section 95 above). The banker on whom a crossed warrant is drawn should pay it only to another banker. It would appear that, if credited as cash, they are outside the Bills of Exchange (Crossed Cheques) Act, 1906 (*q.v.*), and the collecting banker would therefore not have the protection of Section 82, Bills of Exchange Act, 1882. (*The Law of Banking*, Sir John Paget.)

There is often a note on a warrant that it must be presented within three months from date. If not so presented, it should be returned by the shareholder to the company for verification. (See the case of *Thairlwall* v. *Great Northern Railway* under RECEIPT ON CHEQUE.)

The top portion of a dividend warrant shows the amount of income tax deducted and is retained by the shareholder as a certificate of the deduction of income tax and used, by those who are entitled, when claiming a return of tax from the Inland Revenue Commissioners. (See DIVIDEND COUNTERFOIL.)

By the Finance Act, 1924, Section 33—

"Every warrant or cheque or other order drawn or made, or purporting to be drawn or made, after the thirtieth of November, 1924, in payment of any dividend or interest distributed by any company within the meaning of the Companies Act, or a company created by letters patent or by or in pursuance of an Act of Parliament, shall have annexed thereto or be accompanied by a statement in writing showing—

"(*a*) the gross amount which, after deduction of the income tax appropriate thereto, corresponds to the net amount actually paid; and

"(*b*) the rate and amount of income tax appropriate to such gross amount; and

"(*c*) the net amount actually paid."

All dividend warrants, like cheques, though for a less amount than £2, require a twopenny stamp (increased from 1d. to 2d. as from 1st September, 1918. See Finance Act, 1918, Section 36, under BILL OF EXCHANGE). This does not apply to interest warrants on Consols and other British Government stocks. (See Stamp Act, 1891, Exemption 6, under BILL OF EXCHANGE.)

Customers frequently instruct the companies in which they have investments to pay the dividends direct to their bankers, who forthwith credit their accounts, thus saving the customers a good deal of trouble; these orders continue in force until cancelled by the customer; most banks have their own printed forms. The companies make the warrants payable to the banker, generally adding the name of the shareholder at the foot; the banker discharges the warrants in the same way as a shareholder. When a company has a number of dividends to be paid to the same bank, a single cheque may be sent for the total. (See under DIVIDEND MANDATE.)

The articles of association of a company may include a clause to the effect that "the company shall not be responsible for the loss in transmission of any cheque or warrant sent through the post to the registered address of any member, whether at his request or otherwise." The shareholder may protect himself from loss in post by having the dividend, as stated above, credited direct to his bank account.

An ordinary dividend warrant is practically a cheque in a special form, but the dividend warrant of a bank, being drawn by a bank on a bank, is of the nature of a bank draft rather than a cheque. A dividend warrant by a bank in payment of the bank's own dividend should not be payable to bearer on demand as that would constitute an infringement of Section 11 of the Bank Charter Act, 1844. (See DRAFT ON DEMAND.) Some warrants for bank dividends are payable to bearer but require the shareholder's signature as drawer to the instrument.

Where a dividend warrant is not drawn upon any particular bank and simply specifies a number of banks at which it may be presented for payment, it does not conform to the requirements of a cheque. (See INDORSEMENT, LOST DIVIDEND WARRANT.)

DIVIDENDS (IN BANKRUPTCY). With regard to the distribution of dividends amongst the creditors of a bankrupt's estate, the Bankruptcy Act, 1914, provides—

"Section 62. (1) Subject to the retention of such sums as may be necessary

for the costs of administration, or otherwise, the trustee shall, with all convenient speed, declare and distribute dividends amongst the creditors who have proved their debts.

"(2) The first dividend, if any, shall be declared and distributed within four months after the conclusion of the first meeting of the creditors, unless the trustee satisfies the committee of inspection that there is sufficient reason for postponing the declaration to a later date.

"(3) Subsequent dividends shall, in the absence of sufficient reason to the contrary, be declared and distributed at intervals of not more than six months.

"(4) Before declaring a dividend, the trustee shall cause notice of his intention to do so to be gazetted in the prescribed manner, and shall also send reasonable notice thereof to each creditor mentioned in the bankrupt's statement who has not proved his debt.

"(5) When the trustee has declared a dividend, he shall send to each creditor who has proved a notice showing the amount of the dividend and when and how it is payable, and a statement in the prescribed form as to the particulars of the estate.

Joint and Separate Dividends.

"63. (1) Where one partner of a firm is adjudged bankrupt, a creditor to whom the bankrupt is indebted jointly with the other partners of the firm, or any of them, shall not receive any dividend out of the separate property of the bankrupt until all the separate creditors have received the full amount of their respective debts.

"(2) Where joint and separate properties are being administered, dividends of the joint and separate properties shall, unless otherwise directed by the Board of Trade, on the application of any person interested, be declared together, and the expenses of and incidental to such dividends shall be fairly apportioned by the trustee between the joint and separate properties, regard being had to the work done for and the benefit received by each property.

Right of Creditor who has not Proved Debt before Declaration of a Dividend.

"65. Any creditor who has not proved his debt before the declaration of any dividend or dividends shall be entitled to be paid out of any money for the time being in the hands of the trustee any dividend or dividends he may have failed to receive before that money is applied to the payment of any future dividend or dividends, but he shall not be entitled to disturb the distribution of any dividend declared before his debt was proved by reason that he has not participated therein."

Before declaring a final dividend, the trustee shall give notice to creditors whose claims have not been established to his satisfaction, that, if not established within a time limited by the notice, he will make the final dividend without regard to their claims. (Section 67.) (See BANKRUPTCY.)

DOCK WARRANT. A dock warrant is a document issued by a dock company stating that the goods as described therein are entered in its books, and are deliverable to the person mentioned or his assigns by indorsement.

A dock warrant may be in the following form—

X & Y Docks Coy.

No. 19

Warrant for
imported in the ship Master
, from entered by
on the
deliverable to or assigns by
indorsement hereon. Rent commences on
the and all other charges from the
date hereof. Rate charged.

Mark	Numbers	Weight		
		Gross	Tare	

Ledger No. Folio

, *Clerk.*

, *Warrant Clerk.*

The Factors Act, Section 1 (4), states that the expression "document of title" includes a dock warrant, and any warrant or order for the delivery of goods, and any document authorising, either by indorsement or by delivery, the possessor of the document

to transfer or receive the goods. (See FACTORS ACT.)

Where goods have been sold and the warrants indorsed by the seller to the buyer, the goods are, as a rule, subject to the seller's lien for the purchase price. But if the warrants have been lawfully transferred to a purchaser and he sells or pledges them to a third person, and that third person receives the same in good faith, without notice of any lien, the lien of the original vendor is thereby defeated. In such a case the third person (e.g. a banker) holds the warrants as "documents of title" to the goods. If the warrants are pledged or sold by a mercantile agent acting in the ordinary course of business, the pledge or sale shall be as valid as if he were expressly authorised by the owner to make the same (see Sections 2 to 10 of the Factors Act). In reading the sections of that Act, Sections 2 to 7 refer only to dispositions by mercantile agents, and 8 to 10 to dispositions by sellers and buyers.

Warrants which are not governed by that Act (or any Private Act) are not recognised legally as documents of title, but simply as authorities to obtain possession of the goods. In London, however, a firmly-established custom treats dock warrants as documents of title.

Section 11 of the same Act prescribes that the transfer of a warrant may be by indorsement, or, where the document is by custom or by its express terms transferable by delivery, or makes the goods deliverable to the bearer, then by delivery.

The warrants when given as security should be indorsed by the person named, and be accompanied by a memorandum of deposit or letter of lien (stamped 6d.). The memorandum (which should create a continuing security) should give the bank authority, in the event of default of repayment, to sell the goods and out of the proceeds to repay the loan with interest, and all other moneys due. The memorandum should also provide for insurance of the goods against fire, and for a sufficient margin in value to be preserved.

Where there is any uncertainty as to the nature of the document, the goods should be transferred into the banker's name in the books of the dock company or warehouse keeper.

For further information see under TRUST RECEIPT, WAREHOUSE-KEEPER'S CERTIFICATE, WARRANT FOR GOODS.

DOCKET, OR DOCQUET. A slip. The name given in some banks to the form which is sent out yearly or half-yearly to customers to sign, if correct, confirming the balance of their account as stated thereon.

In Scotland, in some of the banks, a docquet or confirmation of balance is signed in the ledger.

DOCUMENTARY BILL. A documentary bill is a bill of exchange which is accompanied by various documents, such as bill of lading, dock warrant, delivery order, policy of insurance, invoice.

A banker must see that policies of insurance attached to bills received by him from abroad are stamped within ten days of their arrival in this country.

A document of insurance is not a good tender in England under an ordinary c.i.f. contract unless it be an actual policy. (*Scott* v. *Barclays Bank, Ltd.* (1923), 39 T.L.R. 198.)

When a banker receives a bill for acceptance, with documents attached, and he sends the bill to the drawee to be accepted, and informs the drawee that the bill of lading and invoice are in his possession, the banker is not thereby held responsible if the bill of lading should prove to be a forgery. And where a banker accepts a documentary bill at the request of a customer, and the bill of lading proves to be forged, the banker, having paid the bill, may recover the amount from the customer.

The holder of a bill, by presenting it for acceptance or for payment, does not warrant the genuineness of the bill or of any of the signatures thereon, or that any accompanying documents are genuine or represent actual goods, and does not undertake to indemnify the acceptor in the event of the documents proving to be forgeries. (*Guaranty Trust Company of New York* v. *A. Hannay & Co.* (1918), 34 T.L.R. 427.) (See PRESENTMENT FOR PAYMENT.)

If documents are sent out along with the bill to the drawee in order that he may inspect them, they should not be left with him. A banker, however, may have received instructions, from the correspondent sending him the bill, to deliver up the documents to the drawee upon his acceptance of the bill; or he may have instructions to give up the documents on payment of the bill under rebate.

When a banker advances against shipments he sends the bill abroad, with the bills of lading attached, for payment. When the documents are given up against acceptance, the banker has then to rely upon the acceptor, regarding whom he should have satisfactory information.

Where a credit is opened abroad at a customer's request, against bills of lading, policy, etc., the foreign banker draws on the banker in this country and sends the bill, with the documents attached, to the English banker. The documents may be taken by the customer and paid for at once; or the amount may be charged to the customer and the documents held as security until required. In some cases, the bills of lading may be handed to the customer and a letter taken from him hypothecating the goods to the bank, and undertaking to hand over to the bank the proceeds from the sale of the goods, and until that is done the customer agrees to hold the goods or the proceeds in trust for the bank. When this is done a separate account is usually opened for the operation. In such cases the banker really parts with his security and has to rely upon the honesty of his customer. In case of failure, trustees generally recognise these undertakings. There is the danger, however, that there may be a contra account due from the customer to a purchaser of the goods, in which case, as the latter has no notice of the hypothecation, he is entitled to deduct the contra account from the amount he is due to pay as the purchase price of the goods. (See TRUST RECEIPT.)

When documentary bills are discounted, the banker takes a note of hypothecation or memorandum of deposit (stamped 6d.), from the customer, by which the bill of lading and the goods are pledged to the banker and under which he is given a right, if necessary, to sell the goods.

For further information see BILL OF LADING, TRUST RECEIPT, WARRANT FOR GOODS.

See the case of *Ladenburg & Co.* v. *Goodwin, Ferreira & Co., Ltd. (in Liquidation) and Garnett (the Liquidator)*, under REGISTRATION OF CHARGES.

If a banker sells a documentary bill he indorses it and thus becomes liable thereon; the bills of lading, indorsed in blank by the shipper, and the insurance policy, accompany the bill.

A banker keeps a record of all his liabilities on acceptances and indorsements.

Where documents are given up against payment of a bill under rebate, the rate is usually ½ per cent above the London Joint Stock deposit rate, and is calculated from the date when the money (free of cost) will be in the hands of the person entitled to receive it, and at the place where it is payable. A receipt is indorsed upon the bill that the amount has been paid under rebate at per cent. (See BILL OF EXCHANGE, BILL OF LADING, DOCUMENTARY CREDIT, MARINE INSURANCE POLICY.)

DOCUMENTARY CREDIT. One method adopted to finance overseas trade is to insert in a contract for the sale of goods a provision that payment shall be made by a banker. The banker assumes liability for the payment of the price of the goods and receives in return a percentage commission and the security afforded by the pledge of the relative documents of title. Importers approach their bankers with the request that the latter should lend their names as drawees of bills covering goods sold to the importers. They do so at the instance of exporters who may not desire to ship goods to parties whose credit is unknown to them and who may wish to discount their drawings at a fine rate at their own bankers. The term at which a bill shall be drawn is a matter concerning the buyer and seller. If the bill is drawn at sight, it is called a bank sight credit; if the bill is drawn at a period after sight, it is called a bank acceptance credit. If the shipping documents are not attached to the bill, the credit is described as a "clean" or "open" credit. Such credits are only opened for customers of the highest standing. The more usual course is for the shipping documents to accompany the bills drawn under the credit.

When a banker pays a bill drawn under a sight credit he looks to his customer to provide him with the funds to do so. When he accepts a term bill drawn under a documentary credit it is customary for him to release the documents to the importer against a Letter of Hypothecation (*q.v.*) in order that the importer may be able to clear and market the goods. When the bill matures, the banker will expect his customers to put up the funds with which to meet it. In both cases a banker will expect all but his strongest customers to furnish at least partial security.

The banker granting the credit will either advise the exporter direct or through a correspondent banker in the exporter's country. The letter of advice will state the conditions governing the credit, such as its expiry date, its terms, what documents must be attached to the bill or bills, the nature and description of the goods, the date by which goods must be shipped, and the ports of loading and destination. The beneficiary (exporter, drawer) must mark all his drawings with the number and date

of the letter of credit under which they are drawn. The granting banker is under no obligation to honour drafts which have not been drawn within the terms of the credit and he will be unable to debit his customer should he do so.

When advising the opening of a credit, the grantor banker will state whether the credit is to be revocable or irrevocable. A credit of the former type can be cancelled at any moment, but a banker must honour drafts drawn under an irrevocable credit even if his customer has failed in the meantine. Bankers therefore charge an additional commission when they open irrevocable credits on behalf of their customers. It is often said that an irrevocable credit is the same thing as a confirmed credit, but this is not accurate since there are credits which are both irrevocable and unconfirmed. "For example, an American bank may ask its London correspondent to open a credit for an Indian beneficiary, the credit to be irrevocable on the part of the American bank and unconfirmed by the London bank. . . . Where more than one bank is concerned, whether or not the credit is irrevocable by all depends on the instructions each receives" (*Journal of the Institute of Bankers*, May, 1936).

Quite apart from whether a credit is revocable or irrevocable, it may be in one of several forms. There is the "marginal" credit, so-called from the fact that the instrument in question consists of a blank form of bill of exchange, in the margin of which are contained the terms of issue of the credit. (Such credits are now rarely seen.)

A "revolving" credit is one for a certain sum which is automatically renewed by "putting on at the bottom what is taken off at the top" so that, as drawings are paid, the beneficiary's power of availment reverts *pari passu* to the original figure. In the Australian, New Zealand, and South African trades there is in use an "anticipatory" letter of credit which contains a clause entitling the beneficiary to draw on the issuing bank before shipment. A "reimbursement" credit is created when a banker in country X requests a banker in country Y to allow an exporter in Y to draw bills on the Y banker, the X banker undertaking to reimburse his correspondent as and when such drawings have to be honoured by the Y banker.

DOMICILED BILL. (The word domicile is from the Latin *domicilium*, a habitation.)

Where a bill of exchange is accepted payable at some place other than the acceptor's private or business address it is said to be domiciled at that place.

A drawer may, if he wish, name the domicile or place of payment in the body of the bill or below the drawee's name.

DOMINION REGISTER. A branch register of members of a company resident in a dominion. The Companies Act, 1948, provides as follows—

Power for Company to keep Dominion Register.

"Section 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.

"(4) References to a colonial register occurring in any articles registered before the first day of November, 1929, 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 exerciseable 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."

Stamp Duties in Case of Shares Registered in Dominion Registers.

"Section 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."

DONATIO MORTIS CAUSA. (Latin.) A gift made in anticipation of, and conditional on, the death of the donor, is called a *donatio mortis causa*.

If a person, in anticipation of death, draws a cheque and hands it to, say, his son, unless the cheque is actually or constructively paid before death takes place, the gift is ineffectual. It cannot be paid by the banker after he has had notice of the drawer's death, and it does not form a charge upon the deceased's estate. But if the donee transfers the cheque to another party, for value, that party would have a claim upon the estate for the amount, though the banker would not pay it after notice of death.

There is, however, a difference between a cheque drawn by the donor, and one payable to the donor. In the former case "his own cheque is not property, it is only a revocable order," but in the latter case it is the "*indicia* of title to property which belonged to him" (Justice Buckley). When it is payable to the donor, the person who receives it obtains a good *donatio mortis causa*, and is fully entitled to the amount. If not indorsed by the donor, it has been held that the recipient is entitled to require the indorsement of his legal representatives.

A bill, a promissory note, and a bond and mortgage deed have also been held to form good subjects of gifts made in anticipation of death. A dying man's own promissory note is not a proper subject of a *donatio mortis causa*. (*Re Leaper*; *Blythe* v. *Atkinson*, [1916] 1 Ch. 579.)

Where a banker's deposit receipt was handed over by the donor immediately prior to his death, it was held to be a good *donatio mortis causa*. (*Re Dillon*; *Duffin* v. *Duffin* (1892), 62 L.T. 614.)

A Post Office Savings Bank deposit book might constitute a good *donatio mortis causa* of the balance standing to the credit of the depositor. (*Re Andrews*; *Andrews* v. *Andrews*, [1902] 2 Ch. 394.)

Where the certificate of registration of an Exchequer Bond (which certificate entitled the owner to delivery of the Bond on demand) was handed over as a dying gift, it was held to be a good *donatio mortis causa* of the Bond. (*Re Lee*; *Treasury Solicitor* v. *Parrott*, [1918] 2 Ch. 320.)

Victory Bonds have been held to form a proper subject of a *donatio mortis causa*, (*Re Richards*; *Jones* v. *Rebbeck*, [1921] 1 Ch. 553.)

Although a cheque payable to the donor or a deposit receipt, forms an effectual gift, a banker, with notice of the payee's death, would not pay such cheque or deposit receipt

to the recipient of the gift (even if indorsed by the deceased donor), until indorsed by the legal representatives of the deceased.

A *donatio mortis causa* is subject to payment of estate and legacy duty.

(See GIFTS INTER VIVOS.)

DORMANT BALANCES. The balances of accounts which have not been operated upon for a long period. (See UNCLAIMED BALANCES.)

The Select Committee to whom the Dormant Bank Balances and Unclaimed Securities Bill was referred, reported in December, 1919. It was estimated that the total of balances dormant for six years prior to 1st January, 1920, was—

On Current Accounts	£2,220,926
On Deposit Accounts	5,787,659
	£8,008,585

Of this total the balances which were the property of untraceable persons were estimated to be £2,846,170. "Your Committee think that a very much longer period than six years should elapse before a state of dormancy, having legal consequences involving publicity, should be recognised." The majority of the Committee were of opinion that if an account has not been operated upon for a period of 30 years, the account should be deemed to be dormant. "Bankers should be required to inform the Public Trustee whenever a balance becomes a dormant balance. Two years after this notification, if the owner should not have been traced, the dormant balance should be transferred to the Public Trustee."

With regard to the operation of the Limitation Act, "all the evidence showed that no bank had ever availed itself of the Statute of Limitations against the claim of an owner." The Committee were of opinion that it would be well "to make the law conform to what appears to be the universal custom, and to enact expressly that the owner's rights to money deposited by him in a bank are not subject to the operation of the Statute of Limitations."

In the case of boxes and parcels entrusted to banks for safe custody, the Committee recommended that a period of 70 years should elapse before they become subject to the provisions of the bill. No action was taken as a result of the Select Committee's report.

In *Swiss Bank Corporation* v. *Joachimson* (1921), 37 T.L.R. 534 the Court of Appeal held that express demand by a customer for repayment of a current account balar is a condition precedent to the right to s the banker for the amount. Atkin, L said "The result of this decision will be th for the future bankers may have to face le claims for balances of accounts which ha remained dormant for more than six yea But seeing that bankers have not been the habit as a matter of business of setti up the Statute of Limitations against th customers or their legal representatives, do not suppose that such a change in wh was supposed to be the law will have mu practical effect."

DORMANT PARTNER. (See SLEEPI PARTNER.)

DOUBLE FLORINS. These inconvenie coins were first issued in 1887 and the iss was discontinued in 1890.

DOWER. Abolished by the Administ tion of Estates Act, 1925. The right of widow, whose husband had died intestate, a life interest in one-third of her deceas husband's real estate, unless there was declaration against dower in the deed conveyance to the husband. The dow existed whether there had or had not be any issue of the marriage.

(See INTESTACY.)

DRAFT. (From the verb to draw. Form ly spelled "draught" and "drawght.")

Bills of exchange on demand, or af sight, or after date, are called drafts, becau they are drawn by one person on anoth Cheques also are sometimes called draf But the word "draft" is used principa when referring to a banker's own draft, instrument drawn upon another banker upon one of his own branches, or to a dr drawn upon his London agents or Lond office, at seven, fourteen or twenty-one da after date, or on demand, or to a forei draft drawn by a banker in one country up a banker in another. (See BANKER'S DRAF

DRAFT BOOK. A book in which are ke particulars of drafts issued, e.g. the da number of draft, name of payee, amou and term (on demand or at so many da date or sight). When a draft is finally pa the date of payment is entered in the colur provided for the purpose. Separate boo may be kept for drafts on demand, and f drafts after date; also for drafts on Lo don, on the head office, on branches, or correspondents.

DRAFT ON DEMAND. (See BANKEI DRAFT.)

DRAWEE. The drawee of a bill is t person to whom it is addressed.

By Section 6 of the Bills of Exchange Act, 1882—

"(1) The drawee must be named or otherwise indicated in a bill with reasonable certainty.

"(2) A bill may be addressed to two or more drawees whether they are partners or not, but an order addressed to two drawees in the alternative or to two or more drawees in succession is not a bill of exchange."

Where different parties to a bill are the same person, Section 5 provides—

"(1) A bill may be drawn payable to, or to the order of, the drawer; or it may be drawn payable to, or to the order of, the drawee.

"(2) Where in a bill drawer and drawee are the same person, or where the drawee is a fictitious person or a person not having capacity to contract, the holder may treat the instrument, at his option, either as a bill of exchange or as a promissory note."

The drawee is the person who is expected to accept the bill and, at maturity, to pay it. If the drawee, on receiving a bill, agrees to pay the amount as indicated therein, he signifies his assent to the drawer's order by signing his name across the face of the bill, called accepting the bill. When the drawee has accepted a bill he is then called the acceptor (*q.v.*) and his written assent on the bill is his acceptance (*q.v.*).

With regard to funds in the hands of a drawee, Section 53 enacts—

"(1) A bill, of itself, does not operate as an assignment of funds in the hands of the drawee available for the payment thereof, and the drawee of a bill who does not accept as required by this Act is not liable on the instrument. This subsection shall not extend to Scotland.

"(2) In Scotland, where the drawee of a bill has in his hands funds available for the payment thereof, the bill operates as an assignment of the sum for which it is drawn in favour of the holder, from the time when the bill is presented to the drawee."

The drawee of a cheque is the banker on whom it is drawn. The banker is responsible only to the drawer and is under no liability to the person presenting the cheque for payment, except in Scotland, where the presentment of a cheque attaches any balance there may be in the drawer's account to the extent of the cheque. In Scotland, if the balance in an account does not admit of the payment of a cheque, the cheque is returned and the balance of the account is transferred to a "Funds attached" account.

The drawee of a bank draft is the bank to which the order to pay is addressed. (See ACCEPTOR, BILL OF EXCHANGE, PRESENTMENT FOR ACCEPTANCE.)

DRAWER. The drawer is the person who signs a bill of exchange giving an order to another person, the drawee, to pay the amount mentioned therein.

In the usual course, a drawer makes out the bill himself, signs it, and sends it to the drawee for acceptance. But a person may sign a bill as drawer which has already been made out and accepted, and even indorsed. A bill purporting to be an inland bill duly accepted before it has been signed by the drawer should be capable of being stamped with an impressed stamp before the drawer affixes his signature thereto and so executes it. But the Inland Revenue appear to be disinclined to take this view, although prior to 1927 no objection was raised to stamping bills in such circumstances. When a simple signature on a blank stamped paper is delivered by the signer in order that it may be converted into a bill, it operates as a *prima facie* authority to fill it up as a complete bill, using the signature, if so authorised, as that of the drawer. (See INCHOATE INSTRUMENT.)

Section 55 of the Bills of Exchange Act, 1882, provides—

"(1) The drawer of a bill by drawing it—

"(*a*) Engages that on due presentment it shall be accepted and paid according to its tenor, and that if it be dishonoured he will compensate the holder or any indorser who is compelled to pay it, provided that the requisite proceedings on dishonour be duly taken;

"(*b*) Is precluded from denying to a holder in due course the existence of the payee and his then capacity to indorse."

A drawer may, if he wish, limit his liability on the bill by such words as "Pay John Brown or order without recourse," or, "*sans recours*." Permission to do so is given in Section 16, as follows—

"The drawer of a bill, and any indorser may insert therein an express stipulation—

"(1) Negativing or limiting his own liability to the holder;

"(2) Waiving as regards himself some or all of the holder's duties."

Where different parties to a bill are the same person, Section 5 provides—

"(1) A bill may be drawn payable to, or to the order of, the drawer; or it may be drawn payable to, or to the order of, the drawee.

"(2) Where in a bill drawer and drawee are the same person, or where the drawee is a fictitious person or a person not having capacity to contract, the holder may treat the instrument, at his option, either as a bill of exchange or as a promissory note." (See PARTIES TO BILL OF EXCHANGE.)

Where a drawer is dead, notice of dishonour must be given to a personal representative; where he is bankrupt notice may be given either to the party himself or to the trustee. (See DISHONOUR OF BILL OF EXCHANGE.)

In applying the provisions of Part IV of the Bills of Exchange Act, 1882, the first indorser of a promissory note is (by Section 89) deemed to correspond with the drawer of an accepted bill payable to the drawer's order. The drawer of a cheque is the person on whose account it is drawn and who must provide the funds to meet it.

If the drawer's signature is forged, the banker cannot charge the cheque to his customer's account. Even if the forgery is so perfectly done as to defy detection under the closest scrutiny, it does not affect the banker's liability. His customer cannot be debited with a cheque which he has not drawn unless the drawer has adopted it or is estopped from setting up the forgery. (See FORGERY.)

When a cheque is returned with the answer "signature differs," the paying banker should advise the drawer. (See the case under SIGNATURE.)

The drawer of a cheque must take care to fill up the cheque in such a manner so that, after it leaves his hands, it cannot readily be altered without giving reasonable ground for suspicion. To neglect this duty of carefulness is a negligence cognisable by law. (See *London Joint Stock Bank, Ltd.* v. *Macmillan and Arthur*, under ALTERATIONS and CHEQUE.)

The various points to be observed when drawing a cheque are given under DRAWING A CHEQUE.

Where a drawer is unable to write, he may sign by making a × in the presence of a witness who is known to the bank officials. The mark should be made at the bank, otherwise the banker cannot be certain that it has been made by the customer. The form is usually this—THOMAS his × mark SMITH.
Witness—JAMES ROBINSON,
Hope Street,
Manchester.

If the customer does not produce an outside person two officials of the bank may witness his mark. Banks do not, as a rule, consider one official sufficient.

When mandates or authorities are held regarding the signing of cheques, the instructions must be carefully observed. A difficulty sometimes arises where a banker is authorised by a limited company to pay cheques when signed by two directors and the secretary, and the secretary is also a director, his name appearing on cheques in both capacities. In such a case the banker should ascertain if the articles of association permit a director to act also as secretary. Even if they do so permit, it is better to have a clear understanding with the company on the point.

Where a person draws a cheque in a representative capacity, words should be added to show clearly that he signs for and on behalf of a principal. (See AGENT, PER PRO.)

Notice of a customer's death cancels the banker's authority to pay his cheques, and any cheques presented after receipt of such notice are returned "Drawer dead," except in the case of a cheque which the banker has agreed to pay, by marking or certifying it, at the drawer's request for payment, or which the banker has, for his own convenience, "marked" in connection with the local clearing.

Where a person is too ill to sign his name, his mark should be witnessed by two persons, one of whom should be the doctor in attendance. It is usual for the doctor to certify that his patient clearly understood the nature of the transaction.

The drawer of a bill payable on demand is discharged if it is not presented for payment within a reasonable time.

The drawer of a cheque is, in an ordinary case, liable thereon for six years from the date of the cheque. (See ALTERATIONS,

AUTHORITIES, BILL OF EXCHANGE, CHEQUE, JOINT ACCOUNT.)

DRAWING A CHEQUE. A customer's cheque must be unambiguous, and must be *ex facie* in such a condition as not to arouse any reasonable suspicion.

A customer is bound to exercise reasonable care in drawing a cheque, to prevent the banker being misled.

To neglect the duty of carefulness in drawing a cheque is a negligence cognisable by law.

If a customer draws a cheque in a manner which facilitates fraud, he will be responsible to the banker for any loss sustained by the banker as a direct consequence of the negligence. It is well settled law that if a customer signs a cheque in blank and leaves it to another person to fill up, he is bound by the instrument as filled up by the agent.

In drawing a cheque it is a very simple thing to take reasonable and ordinary precautions against forgery.

The above remarks were made in the judgment in an appeal to the House of Lords in *London Joint Stock Bank, Ltd.* v. *Macmillan and Arthur*, [1918] A.C. 777. (See under ALTERATIONS and CHEQUE.)

When drawing a cheque the following points should be observed—

(1) Use the form of cheque supplied by your banker. The cheque is usually specially prepared so as to make any erasure easily seen. (See ALTERATIONS.)

(2) Fill up the cheque in black ink, with clear writing and bold figures. Do not use a pencil, or "indelible" pencil, or typewriter for the purpose. The modern type of "ball point" should not be used owing to the tendency of the special kind of ink used to fade.

(3) Commence to write the amount close to the left margin and do not leave any space between the words. Join the amount of pounds to the word "pounds" as though they were one word.

(4) Commence the first figure of the amount close to the left margin and do not leave any vacant space so that another figure may be inserted. The spaces between pounds, shillings and pence should be filled with a dash, thus £23–6–8.

(5) Make the cheque payable to order, if not so printed. (See ORDER.) Do not issue a bearer cheque if it can be avoided.

(6) If the cheque is to be sent by post, cross it with two parallel strong black lines, from edge to edge, and mark it "not negotiable." Do not draw the lines through figures. Cheques with printed crossings should be used when possible. If the name of the payee's banker is known, write it across the cheque as a special crossing. (See CROSSED CHEQUE.)

(7) For further protection, the words "not exceeding.....pounds" may be written across the cheque.

(8) Do not sign a cheque in blank. (See BLANK CHEQUE.)

(9) If an alteration is necessary after a cheque is filled up, the alteration, if material, should be verified by the drawer's signature. If there are several drawers, each should sign the alteration. Initials are too easily forged. (See ALTERATIONS.)

(10) Do not "open" a crossed cheque by writing thereon "pay cash." It is better to issue a fresh cheque, if necessary, and destroy the other. (See OPENING A CROSSING.)

(11) Always use the same form of signature on each cheque, in accordance with the specimen signature supplied to the bank. (See SIGNATURE.)

(12) See that the amount in writing agrees exactly with the figures. (See AMOUNT OF BILL OR CHEQUE.)

(13) Take care to write the payee's name correctly. If the payee is a company, do not abbreviate the company's name. Incorrect spelling or an incomplete name gives subsequent trouble with the indorsement. (See INDORSEMENT.)

Do not leave a space between the payee's name and the words "or order" or "or bearer," but fill up any blank with a horizontal line. Although the leaving of such a space as facilitated an addition to the payee's name so as to constitute a material alteration of the cheque, was not held to be contributory negligence on the drawer's part in the case of *Slingsby and Others* v. *District Bank*, [1932] 1 K.B. 544, Lord Justice Scrutton hinted that it might become so if such frauds became frequent.

(14) If you have several accounts, mark near the signature the name of the account to which the cheque has to be debited.

(15) Where, say, John Brown has authority to draw cheques on the account of John Jones, he should sign "per pro. John Jones, John Brown." Cheques drawn by officials of a company should be signed "For and on behalf of Co., Ltd.," and the officials should state the capacity in which they sign. (See PER PRO.)

(16) Keep the cheque book locked up.

(17) When a new cheque book is required, sign the bank's printed request form.

(18) Avoid borrowing cheques from another person's cheque book.

(19) Fill up the counterfoil fully before detaching the cheque.

(20) If a cheque is lost, give full particulars of it to your banker and ask him to stop payment. If subsequently found, advise your banker at once.

DRAWING ACCOUNT. A current account.

DRAWN BILL. A bill drawn in this country and payable abroad, if negotiated direct from the drawer to a foreign banker in London, is termed a drawn bill. (See MADE BILL.)

DRAWN BONDS. Where a certain amount of bonds is to be repaid periodically, the method adopted, in order to determine which of the bonds should be paid, is to "draw" numbers, on the lottery principle, up to the amount required. The numbers so drawn represent the bonds to be paid off, which are then called "drawn bonds."

Advertisements of such drawings are given in the press, and the *Bondholders' Register* gives complete lists of drawn bonds.

After a bond is drawn interest ceases. In the case of some foreign government bonds, however, the coupons may continue to be paid after a bond is drawn for repayment, but the amounts so paid are treated as repayments on account of the principal.

DRUNKEN PERSON. The contracts of a man known to be drunk are voidable, but not void. Hence drunkenness is no answer to a holder in due course, but would be to an immediate party with notice.

Where a drunken person draws a cheque at the bank counter in order to obtain cash and he really insists upon payment, it is well to have the signature witnessed.

DUE DATE OF BILL. (See TIME OF PAYMENT OF BILL.)

DUPLICATE OR COUNTERPART. By the Stamp Act, 1891, the stamp duty is—

DUPLICATE or COUNTERPART of any instrument chargeable with any duty.

Where such duty does not amount to 5s. . .	The same duty as the original instrument.
In any other case . .	£ 0 s. 5 d. 0

And see Section 72, which is as follows—

"The duplicate or counterpart of an instrument chargeable with duty (except the counterpart of an instrument chargeable as a lease, such counterpart not being executed by or on behalf of any lessor or grantor), is not to be deemed duly stamped unless it is stamped as an original instrument, or unless it appears by some stamp impressed thereon that the full and proper duty has been paid upon the original instrument of which it is the duplicate or counterpart." (See DENOTING STAMPS.)

DURESS. Actual or threatened violence or imprisonment whereby force is put upon a person to enter into a contract. "Force and fear" is the Scottish equivalent of duress. See Bills of Exchange Act, 1882, Section 30, as regards duress in relation to the acceptance, issue, or subsequent negotiation of a bill of exchange.

EARMARKED. If a customer pays in to the credit of his account an amount expressly to meet a specified cheque or bill when presented, the credit is said to be "earmarked," and the money cannot be used by the banker for any other purpose. (See APPROPRIATION OF PAYMENTS.)

EASEMENTS. The rights which the owner of a property may have over the property belonging to another person, such as rights of way, rights of light, rights of air, rights of water, rights of support, etc. An absolute right of way may be acquired by the uninterrupted use for forty years, unless the use was granted in writing by the owner of the land. A right of light over another person's property (except when the privilege is granted in writing by the owner of the property) is acquired after an enjoyment of it for twenty years.

These easements or rights are called incorporeal hereditaments.

An easement is a legal estate save where it is held neither in perpetuity nor for a term of years absolute, when it is an equitable easement.

(See under LEGAL ESTATES.)

"EFFECTS NOT CLEARED." Owing to the exigencies of business, bankers usually credit articles paid in for collection to a customer's account, before clearance thereof. The practice of paying in country cheques on a separate credit slip and crediting them after clearance has practically died out. In some cases items are entered in the ledger and pass book or statement as "Cash"; in other cases they are entered as "Sundries."

In *Capital and Counties Bank* v. *Gordon*, [1903] A.C. 240, Lord Lindley said: "It must never be forgotten that the moment a banker places money to his customer's credit, the customer is entitled to draw upon it unless something occurs to deprive him of that right." Bankers, however, caution their customers by a notice in the pass book or elsewhere to the effect that the right is reserved to postpone payment of cheques drawn against uncleared effects which may have been credited to the account and presumably this precaution saves them from the above ruling. In a later case in a lower court, however (*Underwood, Ltd.* v. *Barclays Bank*, [1924] 1 K.B. 775), it was said: "Though the cheques were in fact credited to the customer's account before they were cleared the customer was not informed of this, and I can see nothing to prevent the bank from declining to honour a cheque if the payment in against which it was drawn had not been cleared."

If there is an agreement express or implied such as would arise out of a course of business to pay against uncleared effects, a banker would be bound to honour cheques drawn against such effects and he cannot arbitrarily and without notice withdraw such facilities.

A banker who expressly or impliedly agrees to drawings against uncleared effects is a holder for value of such effects. (See under COLLECTING BANKER.)

As to the effect of a garnishee order on uncleared effects, see GARNISHEE ORDER.

ELEGIT. (See WRIT OF ELEGIT.)

ENDORSEMENT. Same as Indorsement (*q.v.*).

ENDOWMENT POLICY. A policy of assurance which is payable on the assured surviving to a certain age, or payable at death if it occurs before that age. (See LIFE POLICY.)

ENFACED PAPER. A name given to the promissory notes (Rupee Paper) of the Indian Government, which bore an announcement on the face that the interest was payable by drafts on Calcutta obtainable on presentation of the notes at the Bank of England. (See RUPEE PAPER.)

ENFRANCHISEMENT. The term applied, before copyhold and customary tenure was abolished on 1st January, 1926, to the freeing of copyhold land from manorial incidents and its conversion into freehold land. (See COPYHOLD.)

ENTAILED ESTATE. Where land was granted to a person and the heirs of his body, it was said to be entailed, and the estate was called "estate tail." When the land was freed from the entail, it was said to be disentailed.

On 1st January, 1926, any legal estate tail then existing was, by the Law of Property Act, 1925, converted into an equitable estate. From that date an estate tail cannot exist as a legal estate.

An equitable estate tail may, however, be created by way of trust in any property, real or personal. (Section 130 (1).)

EQUIPMENT BONDS. A name sometimes given to bonds (registered or bearer) which are issued by a company for the purpose of raising money in order to provide equipment for the business. (See BEARER BONDS, REGISTERED BOND.)

EQUITABLE ESTATE. There are only two legal estates in land—

(1) An estate in fee simple absolute in possession.

(2) A term of years absolute.

All other estates, interests, and charges in or over land take effect as equitable interests.

Prior to 1926, in a mortgage of freehold property the legal fee simple was conveyed to the mortgagee, and the mortgagor retained merely the equity of redemption, but, since 1925, the legal fee simple remains in the mortgagor and a legal term of years is vested in the mortgagee; and a second mortgagee (who had formerly only an equitable estate) has also a legal term of years vested in him. (See MORTGAGE.)

A deposit of the title deeds of a legal estate with or without a memorandum of deposit is an equitable mortgage, and does not require registration as a land charge. (See LAND CHARGES.)

EQUITABLE MORTGAGE. Where a borrower gives to a lender, as security, the title deeds of his property, without any document of charge, or the deeds with a memorandum of deposit, or even a memorandum of charge without the deeds, it is an equitable mortgage. An equitable mortgage does not vest a legal estate in the lender, as does a legal mortgage, but in the memorandum which usually accompanies the deposit of deeds, the borrower, as a rule, promises to grant a legal mortgage when requested to do so. (See MEMORANDUM OF DEPOSIT.)

An equitable mortgagee, when he desires to realise his security, requires to go to the Court for power to sell, or to foreclose, or to enter into possession, or to appoint a receiver (unless the mortgage is by deed). If, however, he obtains a legal mortgage he has power to sell or put in a receiver without applying to the Court, but, in the case of a mortgage deed executed after 1925, the mortgagee's power to sell or appoint a receiver shall not be exercised only on account of the mortgagor committing an act of bankruptcy or being adjudged a bankrupt, without the leave of the Court. (See under MORTGAGE.)

By Section 91 (7) of the Law of Property Act, 1925, the Court may, in the case of an equitable mortgage, create and vest a mortgage term in the mortgagee to enable him to carry out a sale as if the mortgage had been made by deed by way of legal mortgage.

This Act does not affect the right to create an equitable mortgage by deposit of the deeds relating to a legal estate.

By Section 13, "the Act shall not prejudicially affect the right or interest of any person arising out of or consequent on the possession by him of any documents relating to a legal estate in land." If a person obtains a legal mortgage (subsequent to a banker's equitable mortgage with deeds) registration of that mortgage will not secure priority to the banker's charge if he continues to hold the deeds.

An equitable mortgage by deposit of deeds does not require to be registered under the Land Charges Act, 1925, but an equitable charge without a deposit of deeds must be registered. (See LAND CHARGES.)

When an equitable mortgage is given by a company with or without the deeds, the charge must be registered within twenty-one days after the date of its creation. (See REGISTRATION OF CHARGES.)

For the purposes of the Stamp Act, 1891, "equitable mortgage" means an agreement or memorandum under hand only, relating to the deposit of any title deeds or instruments constituting or being evidence of the title to any property whatever (other than stock or marketable security), or creating a charge on such property. (Section 86 (2). See MORTGAGE.)

A memorandum of deposit under *seal* . . .	The duty is the same as for a mortgage (see MORTGAGE).
A memorandum of deposit of deeds under *hand* (whether a principal security or collateral security) . .	For every £100 and any fractional part of £100 of the amount secured, 2s.

The stamp on a memorandum of deposit, under hand, of documents of title other than title deeds is sixpence for any amount, and an adhesive stamp may be used.

If under seal, the duty is the same as for a mortgage. (See Section 86 (1) (*d*) (*g*), Stamp Act, 1891, under MORTGAGE.)

Where a memorandum of deposit under *seal* is held (stamped 5s. per cent) and a legal mortgage is subsequently obtained in fulfilment of the agreement in the memorandum to give a mortgage, the mortgage comes under the heading of "substituted security" (see Schedule (2) under MORTGAGE), and is liable to the duty of 1s. per cent, but limited to 10s. in all. If, however, the memorandum of deposit is under *hand*, the subsequent legal mortgage is liable to the full mortgage duty of 5s. per cent.

When a limited company (which has power to give an equitable mortgage without using its common seal) authorises one of the

directors or an official of the company to sign a memorandum of deposit under hand (stamp 2s. per cent) the document should be accompanied by a properly certified copy of the resolution of the directors empowering him to deposit the deeds and sign the memorandum.

A letter or memorandum of deposit, chargeable with *ad valorem* duty, must be stamped within thirty days of its date, or, if received from abroad, within thirty days of its receipt in this country.

By an Inland Revenue Circular—

The instruments given to banks to secure overdrafts are almost invariably worded as securities for all sums due or to become due. In the case of equitable mortgages, every security, whether primary or collateral, is chargeable with the duty of 1s. per cent (now 2s. per cent) on the highest amount at any one time due in respect of the indebtedness secured to the bank up to date (i.e. within thirty days) and with additional duty from time to time, if the indebtedness should subsequently reach, at any one time, a higher total. In no case can the value of the security deposited be taken as the basis of assessment for mortgage duty. (See copy of the Circular under MORTGAGE.)

For instance, if the deeds of several different properties are lodged as security, with a separate memorandum for each to cover the overdraft, each memorandum requires to be (according to the above Circular of the Inland Revenue) stamped to cover the full amount secured. But if each memorandum limits the amount recoverable against the security named therein, then the above rule does not apply and the charge requires to be stamped at 1s. per cent only on the amount recoverable. The amount to be inserted should be the maximum figure at which the banker values the particular security.

A memorandum, unless a fixed amount has been inserted in it, may be further stamped to cover an additional overdraft, but the Stamp Authorities will, before stamping it with the extra stamp, require the banker to state what has been the highest amount of overdraft and the date when it occurred. It must be stamped for the additional amount within thirty days of the extra overdraft being taken.

If a fixed amount is inserted in the memorandum of deposit, the security cannot be made available for any greater amount than that stated in the document. If the property is to form a security for more than that amount, a fresh memorandum must be taken.

If a memorandum of deposit is unstamped or insufficiently stamped, it cannot be accepted as evidence in a Court of Law or Equity. An instrument which has not been stamped within the prescribed time may be stamped at any time afterwards under a penalty of £10. Neglect to stamp a memorandum does not affect the validity of it.

In Scotland, a deposit of title deeds, either with, or without, a memorandum of deposit, does not create an equitable mortgage, as in England. If, therefore, a banker in England advances against real property in Scotland, the form of charge must conform to the law of Scotland. (See DISPOSITION ABSOLUTE, MORTGAGE, TITLE DEEDS.)

EQUITY OF REDEMPTION. Before 1926 a legal mortgage of a freehold was made by the mortgagor conveying to the mortgagee the whole of his interest in the fee simple, subject to a proviso that if he repaid the mortgage debt within a stipulated time (usually six months) the mortgagee would reconvey the property to him. Until such time the mortgagor had a legal right to recover his land, but after such time the mortgagee had a legal right to the land and the mortgagor had only an equitable right, called the equity of redemption. The Court of Chancery enforced this equitable right where non-payment was due to accident, etc., but later gave relief in *all* cases where default was made at the prescribed time. Thereafter any stipulation in the mortgage deed which qualified the equity of redemption was of no effect, this being the meaning of the phrase "Once a mortgage, always a mortgage."

Since 1925 a mortgage of freeholds is effected by a demise for a term of years absolute. (See MORTGAGE.) In this way the legal estate remains in the mortgagor (previously he retained only an equity of redemption) and the mortgagee has a legal estate also in the shape of a term of years. They are both called estate owners. The equity of redemption is preserved by a provision in the mortgage for cesser of the term of years on redemption. When repayment of the money secured by the mortgage is made, a receipt for it is indorsed upon the mortgage (which receipt operates without any reconveyance), and the mortgage term becomes a satisfied term and shall cease (i.e. cesser of the mortgage term). The receipt must be stamped as a reconveyance. (See STATUTORY RECEIPT.)

Where a mortgagor is entitled to redeem, he is entitled to require the mortgagee, instead of re-conveying or surrendering, to assign the mortgage debt and convey the mortgaged property to any third person, as the mortgagor directs. This provision does not apply in the case of a mortgagee being or having been in possession. (Law of Property Act, 1925, Section 95.)

Subject to any contrary intention expressed in the mortgage deed, a mortgagor seeking to redeem any one mortgage is entitled to do so without paying any money due under any separate mortgage made by him, solely on property other than that comprised in the mortgage which he seeks to redeem. (Section 93.) (See CONSOLIDATION OF MORTGAGES.)

A mortgagor is entitled, as long as his right to redeem subsists, at his own cost, to inspect and make copies of, or extracts from, the documents of title relating to the mortgaged property. (Section 96.) (See MORTGAGE, TITLE DEEDS.)

ESCHEAT. Where a tenant in fee simple died intestate and without heirs, his estate escheated or reverted to the superior lord, i.e. the Crown.

Escheat was abolished by the Administration of Estates Act, 1925, and if an estate owner dies intestate or without heirs his property goes to the Crown as *bona vacantia*. (See INTESTACY.)

ESCROW. A deed handed to a person who is not a party to it, to be held by that person until certain conditions have been fulfilled by the party in whose favour the document is drawn. When the conditions have been complied with, the document takes effect as a deed and is then delivered to that party, the grantee.

ESTATE DUTY. This duty is imposed upon the principal value, i.e. the gross price it would sell for in the open market at the date of death of the deceased, of all property, real or personal, which passes on the death of any person after August 1, 1894, unless it be an estate not exceeding £3,000 or some of the other exemptions mentioned in the Finance Act, 1894, or subsequent Acts.

The executor or administrator is required to furnish particulars of the property of the deceased person, and the duty on the personal property is payable before obtaining a grant of probate or letters of administration. If the duty on the other property passing is not paid at the same time, an account setting forth the particulars of the property must be supplied within six months of the death.

When a death occurs after 1925, a purchaser of a legal estate will take free from any charge for death duties, unless the charge is registered as a land charge.

The estate duty payable upon real property may be paid in eight equal yearly instalments or sixteen half-yearly instalments, with interest at 2 per cent from the date at which the first instalment is due. The first instalment is due at the expiration of twelve months from the date of the death. If the property is sold, the duty is payable on the completion of the sale.

Where a person has conveyed a property by deed of gift and dies within five years afterwards, estate duty is payable on the value of the property so conveyed in the same manner as though he had died possessed of it. (See GIFTS INTER VIVOS.)

The duty is chargeable upon the benefit arising by survivorship in the case of joint investments or ownerships.

Where estate duty has become payable on any property consisting of land or a business (not being a business carried on by a company), certain reductions are allowed in respect of quick successions. (See Section 15, Finance Act, 1914.)

The Finance Act, 1949, abolished succession and legacy duty, but increased the rates of estate duty. The present rates as amended by the Finance Act, 1954, are shown on page 264. Agricultural land, industrial hereditaments, plant and machinery are charged with a reduction of 45 per cent in each of these rates.

Money received under a policy of assurance effected by any person on his life, where the policy was wholly kept up by him for the benefit of a designated donee (as, for example, where a husband insures his life for the benefit of his wife) is liable to estate duty (*Lord Advocate* v. *Fleming*, [1897] A.C. 145). If he paid part only of the premium the assurance money is liable only for a proportionate part of the duty.

Estate duty is not chargeable on real (immovable) property situated out of the United Kingdom, or on personal (movable) property out of the United Kingdom when the deceased was domiciled out of the United Kingdom at the time of his death, but, if he was domiciled in the United Kingdom when he died, estate duty is payable on the personal property. Where a bank holds securities to the order of a customer domiciled abroad or in the Isle of Man or the Channel Isles, probate or

18—(B.1535)

GENERAL SCALE OF RATES OF ESTATE DUTY

For deaths on or after 30th July, 1954

Principal Value of Estate				Rate per Cent of Duty
	£		£	
		Not exceeding	3,000	*Nil*
Exceeding	3,000	and not exceeding	4,000	1
,,	4,000	,, ,,	5,000	2
,,	5,000	,, ,,	7,500	3
,,	7,500	,, ,,	10,000	4
,,	10,000	,, ,,	12,500	6
,,	12,500	,, ,,	15,000	8
,,	15,000	,, ,,	17,500	10
,,	17,500	,, ,,	20,000	12
,,	20,000	,, ,,	25,000	15
,,	25,000	,, ,,	30,000	18
,,	30,000	,, ,,	35,000	21
,,	35,000	,, ,,	40,000	24
,,	40,000	,, ,,	45,000	28
,,	45,000	,, ,,	50,000	31
,,	50,000	,, ,,	60,000	35
,,	60,000	,, ,,	75,000	40
,,	75,000	,, ,,	100,000	45
,,	100,000	,, ,,	150,000	50
,,	150,000	,, ,,	200,000	55
,,	200,000	,, ,,	300,000	60
,,	300,000	,, ,,	500,000	65
,,	500,000	,, ,,	750,000	70
,,	750,000	,, ,,	1,000,000	75
,,	1,000,000	. . . . .		80

letters of administration granted by a court in the United Kingdom must be exhibited before such securities are released. There is a liability for estate duty in respect of such securities, except in the case of 3½ per cent War Loan, 4 per cent Victory Bonds, and 4 per cent Funding Loan, 1960–90.

ESTATE OWNER. The owner of a legal estate is called an "estate owner." A legal estate may subsist concurrently with, or subject to, any other legal estate in the same land. (Law of Property Act, 1925, Section 1.) For example, a mortgagor of freeholds and the mortgagee are both estate owners, the former having the legal fee simple and the latter a legal term of years absolute. (See MORTGAGE.)

ESTATE TAIL. An estate tail (or fee tail) is the opposite of fee simple. An estate tail is where land is granted to a person and the heirs of his body, so long as there are such heirs, whereas a fee simple is granted to his heirs, which need not necessarily be the heirs of his body. (See INTESTACY.)

The word "tail" is from the French *taille*, a cutting (*tailler*, to cut), indicating that the land is cut or separated from any other estate and limited to the person and the actual descendants of the person to whom it is conveyed. If the man has been married more than once, the descendants of each marriage are included; but if the land is granted, or limited, to the descendants of one wife it is called a "special estate tail."

When an estate tail is converted into a fee simple it is said to be disentailed, the entail being barred, and the tenant may then dispose of the estate at will.

On 1st January, 1926, any legal estate tail then existing was by the Law of Property Act, 1925, converted into an equitable interest. From that date an estate tail cannot exist as a legal estate. (See LEGAL ESTATES.) An equitable estate tail may, however, be created in any property, real or personal.

ESTOPPEL. A rule of evidence whereby a man is not allowed to disprove facts in the truth of which he has by words or conduct induced others to believe, knowing that they might or would act on such belief. A man is not permitted to resist an inference which a reasonable person would necessarily draw from his words or conduct.

"Where one by his words or conduct wilfully causes another to believe the existence of a certain state of things, and induces him to act in that belief so as to alter his own previous position, the former is prevented from averring against the latter a different state of things as existing at the same time."

A drawer of a cheque may be estopped from denying the genuineness of his signature, notwithstanding that it is forged, where his own conduct has led the banker into paying the cheque, i.e. by keeping silent when he should have warned the banker. Where a wife forged her husband's cheques which were paid by the bank, and the husband subsequent to his wife's confession delayed advising the bank until after his wife's death, it was held that he was estopped from denying the genuineness of the signature on the ground that his silence had deprived the bank of its civil remedy against the forger, on account of her death. (*Greenwood* v. *Martins Bank, Ltd.*, [1932] 1 K.B. 371.)

The following estoppels arise on bills of exchange—

The acceptor cannot deny to a holder in due course the existence of the drawer, the genuineness of his signature, and his capacity and authority to draw the bill. Where a bill is payable to the drawer's order, the acceptor cannot deny the capacity of the drawer to indorse, but he can deny the genuineness or validity of his indorsement. Likewise he cannot deny a payee's existence and capacity to indorse, but he can deny

the genuineness or validity of his indorsement. (Section 54, Bills of Exchange Act, 1882.)

The drawer cannot deny the existence of the payee and his capacity to indorse.

The indorser cannot deny the genuineness and regularity of the drawer's signature and all previous indorsements. (Bills of Exchange Act, Section 55.)

EX ALL. Shares sold "ex all" exclude the buyer from accrued dividends, and all rights which the seller may have as shareholder.

EX COUPON. Without the coupon for interest just due. Bonds are usually quoted as ex coupon on the evening of the date when the coupon is due.

EX DIVIDEND. Without the dividend. A purchaser buying shares so quoted will not get the benefit of a dividend in course of payment. British and Colonial Government and Corporation securities are quoted "ex div." about one month before the interest date. Victory Bonds are marked "ex div." ten days before the coupon date. Bearer bonds with sterling coupons and registered debentures are "ex div." on the day the coupon or interest is payable.

American and Canadian shares are quoted "ex div." on the day following that on which they are similarly quoted in New York or Montreal.

Securities transferable by deed (other than registered debentures) are generally quoted "ex div." on the contango day following the date on which the dividend has been declared if the company's transfer books have been closed for the preparation of the dividend warrants.

EX DRAWING. Without any benefit there may be from a drawing of bonds for payment which is due to be made.

EX INTEREST. Without interest.

EX NEW. Where new shares are being issued to the present shareholders of a company, a shareholder sometimes sells his old shares "ex new"; that is, he reserves to himself the right to receive the new shares.

EX RIGHTS. Shares sold "ex rights" are without any rights to a new issue of shares which the old shareholders are entitled to, the seller reserving such rights to himself.

EXCAMBION. (See EXCHANGE.)

EXCHANGE. A mutual arrangement by which one piece of property is exchanged for another. By the Stamp Act, 1891, the stamp duty is—

EXCHANGE or EXCAMBION—Instruments effecting.	£	s.	d.
In the case specified in Section 73 see below.			
In any other case	0	10	0

(Excambion, a term used in Scotland for the contract of an exchange of property.)

"Section 73. Where upon the exchange of any real or heritable property for any other real or heritable property, or upon the partition or division of any real or heritable property, any consideration exceeding in amount or value one hundred pounds is paid or given, or agreed to be paid or given, for equality, the principal or only instrument whereby the exchange or partition or division is effected is to be charged with the same *ad valorem* duty as a conveyance on sale for the consideration, and with that duty only; and where in any such case there are several instruments for completing the title of either party, the principal instrument is to be ascertained, and the other instruments are to be charged with duty in the manner hereinbefore provided in the case of several instruments of conveyance." (See PARTITION.)

EXCHANGE AS PER INDORSEMENT. These words, or "exchange and stamps as per indorsement," are sometimes found on bills drawn in this country on some other country in pounds sterling. Such a clause should only be placed by the drawer on a bill which he proposes to sell to his banker, since it is inapplicable to bills handed in for collection. The negotiating banker will indorse his buying rate of exchange on the bill and this constitutes the rate at which it is payable by the drawee. The clause is most commonly found on bills drawn on Australia or New Zealand or South Africa, and in these cases entitles the drawer to receive the face amount in pounds sterling at once, the bill being then forwarded by, say, the London office of an Australian bank to its appropriate branch in Australia, there to be met by the drawee in Australian pounds at the rate indorsed by the bank in London. That rate will include the negotiating banker's remuneration, cost of Australian stamp, and interest.

EXCHANGE BROKER. (See BROKER (FOREIGN EXCHANGE).)

EXCHANGE CLAUSE. A clause placed by the drawer on a bill of exchange drawn in his own currency and payable in another country. Its purpose is to ensure that any exchange charges shall be paid by the drawee. There are many forms of exchange

clause and in some countries the law will only recognise clauses worded in a particular manner. A few examples follow, the bill in each case being drawn in sterling—

"Payable at the current rate of exchange for sight drafts on London."

"Payable by approved banker's cheque on London without loss in exchange."

"Payable at banker's selling rate of exchange for sight drafts on London."

"Payable in pounds sterling effective."

"Payable at banker's selling rate of exchange for 90 days' sight drafts on London" (in the South American trade).

"Exchange as Per Indorsement."

Exchange clauses are frequently called sight clauses.

EXCHANGE CLEARING AGREEMENT. An agreement between two countries by which the exporters of both countries receive no direct payment from the importers in those countries. For example, before the war, Hungarian importers of German goods had to pay the price in Hungarian currency (pengoes) into a special account at the Hungarian National Bank, while German importers of Hungarian goods had to pay the purchase price into a special account at the Reichsbank. Hungarian exporters to Germany were paid out of the sums paid in by Hungarian importers from Germany, while German exporters to Hungary were paid out of the sums paid in by German importers from Hungary. Thus no foreign exchange was bought or sold. In a bilateral arrangement of this type there is a tendency for the imports and exports concerned to balance each other, as otherwise one or other country will be in possession of unused purchasing power. Other items than merchandise imports and exports figure in clearing agreements. Tourist expenses and debts of all kinds find their place in many such agreements. These agreements are not the same as compensation (or goods clearing) agreements. The latter are similarly concluded between two States but are a form of barter by which the import of certain specified goods is offset against the export of other specified goods.

EXCHANGE CONTROL ACT, 1947. This Act is mainly a codification and simplification of previous exchange control orders, but it is also designed to facilitate a gradual return to the free convertibility of sterling ruling before September, 1939. It prescribes that all residents of the United Kingdom shall make their applications for "specified" foreign currencies (i.e. for nearly all foreign currencies) through the intermediary of one of a list of banks known as "authorised dealers." Moreover, all such residents must offer to the Treasury, through an authorised dealer, any gold or specified foreign currencies coming into their possession.

Under the Act, the world is divided into two parts: the first consists of the United Kingdom and the "scheduled territories," and the second of the remaining countries. The First Schedule of the Act lists the scheduled territories, which comprise the British Empire (except Canada and Newfoundland), the mandated territories, Iraq, Transjordan, Iceland, and the Faroe Islands. The Act goes on to give the Treasury power to add or to subtract from this list, which corresponds to the countries formerly called "sterling area" countries.

For the great majority of residents in the United Kingdom, the principal restriction in the Act is that which prohibits payments from an United Kingdom account to the account of a person or concern situated outside the scheduled territories, unless the permission of the Treasury has first been obtained. Part III of the Act, which is concerned with securities similarly prevents transfers to a "non-resident"; while Part IV places restrictions on the import of legal tender notes into the United Kingdom and prohibits their export except with permission.

Payments for exports from Britain to a place outside the scheduled territories must be made, generally speaking, in the currency of the importing country or in such other manner as is satisfactory to the Treasury.

Section 15 provides that owners, whether resident or non-resident, of bearer securities must lodge them with or to the order of an authorised depositary (i.e. an approved bank of the owner's choice) to whom alone payments of capital or income may be made. No dealings in bearer securities in the United Kingdom are permitted unless such securities are in the custody of an authorised depositary.

The following matters are of particular interest to banks—

(1) The opening of accounts for non-residents requires approval by the Bank of England, as do changes in designation caused by a customer's permanent change of domicile.

(2) Credits to non-resident accounts must be examined to ensure that the regulations are observed.

(3) Cheques credited to a non-resident account must be so marked, showing the designation of the account credited.

(4) In general, the only permitted debits are for payments in the sterling area or to accounts of the same designation as that of the account debited. Cheques drawn by a resident which show signs of having been negotiated outside the scheduled territories cannot be paid until approval has been obtained from the Bank of England.

(5) No borrowing facilities can be granted to non-residents without the prior approval of the Bank of England.

(6) Borrowing by companies in the United Kingdom which are under non-resident control also requires the permission of the Bank of England.

(7) Guarantees, indemnities, or any transactions whatsoever whereby a resident incurs a liability, specific or implied, present or future, to or on behalf of a non-resident, normally require approval by the Bank of England.

The term "non-resident" means any person who, under the Exchange Control Act, is not deemed to be a resident of the scheduled territories and the term does not necessarily imply physical non-residence.

EXCHANGE DEALER. (See DEALER (FOREIGN EXCHANGE).)

EXCHANGE EQUALISATION ACCOUNT. An account managed on behalf of the Treasury by the Bank of England. It was established in 1932, under authority of the Finance Act, 1932, with the object of preventing short-term changes in the international value of sterling, arising from causes unconnected with commerce. The managers of the Account were authorised to buy and sell gold or foreign currencies in such a manner as to smooth out variations in the exchange value of sterling due to seasonal fluctuations, the operations of speculators and international movements of capital, unconnected with trade. In addition, the operations on behalf of the Account were intended to afford to the internal financial structure of the country a measure of insulation and protection from irrelevant external influences.

Following the suspension of the gold standard in Great Britain in September, 1931, the value of the pound sterling in terms of gold currencies fluctuated violently, and though the Bank of England endeavoured to control these fluctuations, it soon became clear that the resources of the Bank available for this purpose, and its limited powers as then constituted, were unequal to the task. The Exchange Equalisation Account was therefore established in April, 1932, and was provided with adequate powers and resources for its purpose.

The initial capital consisted of £150,000,000 borrowed from the Consolidated Fund by means of the issue of Treasury bills. The balance of the old Dollar Exchange Account, amounting to £25,000,000, was also transferred to the Account, and payment of £8,000,000 was made from the Account to the Bank of England in respect of part of the losses incurred by the Bank in the repayment of the balance of credits obtained in France and America in August, 1931. The capital assets of the Account at its commencement thus amounted to £167,000,000.

The unsettled monetary conditions in the United States at the beginning of 1933 and in Europe, particularly in France, between 1933 and 1936, seriously affected the stability of the external value of sterling, and it became necessary to increase the resources of the Account in order that it could cope with the difficulties encountered. In May, 1933, the capital assets were raised by £200,000,000; and in April, 1937, a further increase of £200,000,000 was authorised, making a total fund of £567,000,000.

The actual operations on the Account have always been of necessity a closely-guarded secret; but in 1937, when the managers had become well experienced in their operations and when the resources at their disposal were comparatively unassailable, the Government decided to make public at six-monthly intervals the amount of gold held by the Account. The information given, however, showed the holdings at a date three months prior to the date of publication. With the outbreak of war in 1939 the issue of these details was suspended.

In 1934 a similar account was established in the United States, and, in 1936, France and other countries followed suit. In September, 1936, Britain, the United States, and France reached an agreement as to the working of these accounts, and other countries have since joined them.

In the closing months of 1938 and in 1939, the events which preceded the outbreak of war caused considerable instability in the exchange value of sterling, and the operations by the managers of the Account increased in size and scope. It thus became necessary again to strengthen the resources available to the Account; and on 6th January, 1939, £200,000,000 of bar gold

(valued at the statutory price of £3 17s. 10½d. per ounce troy) was transferred from the Issue Department of the Bank of England to the Account. To make this possible, authority was given for an increase in the upper limit of the Fiduciary Issue (*q.v.*) from £260,000,000 to £400,000,000. The Currency and Bank Notes Act, 1939 (*q.v.*) became law on 28th February, 1939, and, under its terms, the gold holdings of the Issue Department were written up to their market value, with the result that it became possible to reduce the upper limit of the Fiduciary Issue from £400,000,000 to £300,000,000 and to transfer approximately £100,000,000 in securities to the Account.

With the outbreak of war in September, 1939, the Currency (Defence) Act, 1939 (*q.v.*) was passed, and under its terms the powers and scope of the Account were greatly increased. Authority was given for its funds to be invested in securities or for the purchase of gold in such manner as the Treasury considered expedient for securing the defence of the realm and for the prosecution of the war. Acting on this, the whole of the gold held by the Issue Department of the Bank of England, apart from a nominal amount, was transferred to the Account on 7th September, 1939. This amounted to £280,000,000, and the transaction necessitated an increase in the Fiduciary Issue to £580,000,000. Thus the Government's total gold resources became concentrated in the Account. Measures were also taken to place private holdings of gold, foreign exchange, and foreign securities at the disposal of the Government, so that the total foreign resources of the country became concentrated in one reserve under the control of the Treasury.

In the assumption by the Government of complete control over the country's foreign exchanges, the operations on behalf of the Exchange Equalisation Account played a paramount role, and the responsibilities of the managers of the Account have thus widened from their original limited scope to the exercise of an over-all control in all matters pertaining to the international value of sterling.

EXCHANGE RESTRICTIONS. During the war of 1914–1918, many countries put in force various restrictions on the free export of their currencies, and control measures were not uncommon right up to 1926. From that year to 1931 there took place a general removal of restrictive regulations, but the breakdown of the gold standard brought with it a tendency to renew and accentuate all the former prohibitory measures. The term is usually applied to abnormal measures for the defence of the exchange, but these may vary considerably from time to time and country to country. Prior to the war of 1939–45, Great Britain imposed no actual restrictions, but the Treasury exercised a measure of control through a fund called the Exchange Equalisation Account (*q.v.*); in certain other countries, such as Germany and Greece, the uses to which the currency could be put by traders and other private persons was subject to detailed regulations providing for all foreign exchange acquired to be delivered to the Government and for the rationing of the supply of foreign exchange to those wishing to make payments abroad. (See also EXCHANGE CLEARING AGREEMENTS.)

EXCHANGE SLIP. A form which is filled up and signed by the person requiring notes, cash, or cheques on other branches or banks, to be exchanged by a banker. It is very desirable that the form should provide that the customer's account shall be debited if the article exchanged is unpaid or if for any reason the bank subsequently suffers liability thereon.

EXCHANGES. The cheques which each banker in a town holds drawn upon the other bankers in the same town are collected each day by means of the "local clearing" or "exchanges."

According to the size of the town and the quantity of cheques, there may be one, two or even three "exchanges" in one day; usually a settlement takes place only at the final exchange of the day.

In its simplest form, if banker X holds cheques drawn on banker Y, he sends a clerk, "the exchange clerk," with the cheques to Y. The clerk hands the cheques to Y and at the same time Y's exchange clerk hands to X's clerk any cheques which he may have, drawn upon X. Each clerk makes a list, usually in an "exchange book," entering on the one side all cheques handed over and on the other side all cheques received. The difference between the two sides is called the "balance of exchange," and is settled between the two banks either in cash or by a London draft or through their respective London offices or London agents. If the cheques received by X amount to more than the cheques given to Y, the exchange is against X and in Y's favour, as X has to pay Y the difference. If, on the other hand, X gives Y a greater amount

than he receives, the balance is in favour of X, and he receives payment of the difference from Y.

If there are other bankers in the town, X's clerk may visit all of them in turn and exchange cheques with each.

In some towns one banker undertakes the visits during one week, and another banker takes the duty next week and so on. But where there are several bankers it is the custom for a representative from each to meet at a certain bank, or in a particular room, and mutually exchange cheques. A settlement may be made separately by each one with the others, or one banker may adjust the various differences of the rest, with the result that each has only to pay or receive one amount.

Each cheque should bear upon its face the stamp of the presenting banker.

Any unpaid cheques must be returned the same day, and it forms a matter of local arrangement as to the hour up to which they may be returned.

"Returns" which are too late to form part of the day's settlement are sometimes paid in cash or settled specially, or, in some banks, a signed voucher is given for the returned cheque, and the voucher is passed through in the next day's exchange just like a cheque.

Cheques paid to the credit of a customer's account, which are drawn upon another banker in the same town, may be presented for payment on the day of receipt or held until the next day, but in practice all cheques received up to the time of the exchange are passed through the same day.

EXCHANGING CHEQUES. Customers used frequently to request their bankers to exchange, for cash, cheques drawn on other banking offices, instead of paying them into their accounts.

When a banker so encashed a cheque he became a holder for value therefor (and possibly a holder in due course) and did not act as an agent for collection. Customers asking for this facility were required to sign an exchange form. (See above under EXCHANGE SLIP.)

In 1945, however, at the request of the Treasury, member banks of the British Bankers' Association gave notice that this facility would in future be restricted to salary or wages cheques, pensions, etc., cheques, dividend warrants, orders for payment issued by Government and local authorities in respect of service pay and pensions, etc.

This restriction was imposed in order to check black market operations and income tax evasion by requiring crossed cheques to be paid into the payee's or holder's banking accounts.

Branch managers are given discretion to exchange cheques up to £10 in approved cases.

EXCHEQUER ACCOUNT. The account of the Treasury at the Bank of England; also referred to as the Consolidated Fund.

EXCHEQUER BILLS. Promissory notes of the Government. They were first issued in 1696, and constituted the floating debt of the country for 160 or 170 years. There are no Exchequer Bills now in existence, Treasury Bills having superseded them. (See TREASURY BILLS.)

EXCHEQUER TALLY. A notched piece of wood, 8 or 9 inches in length, which, at one time, was given as a form of receipt to a person who deposited money with the Government. A similar notched stick was retained in the Exchequer Department, and when the depositor wanted his money he produced his portion of the stick, and if the two sticks "tallied," that is, the notches on the one agreed with the notches on the other, he was paid his money.

It is said that a notch of 1½-inches represented £1,000, 1-inch £100, ⅞-inch £10, half a notch of that size £1, ⅜-inch 1s., smallest notch 1d., a small hole ½d.

The use of tallies was abolished in 1782, but the old ones were preserved till 1834, when it was ordered that all the old tallies in the possession of the Government should be destroyed. They were burnt in stoves in the House of Lords, and it is supposed that they were the cause of the fire which destroyed both Houses of Parliament.

EXECUTION OF TRUSTS (EMERGENCY PROVISIONS) ACT, 1939. (See under TRUSTEE.)

EXECUTOR. An executor is the person appointed in the will of a testator to administer his estate, to pay his debts, and distribute his assets as instructed in the will.

The probate is the official evidence of an executor's title, but not the origin of his title, which is the will itself; his powers commence as from the death of the testator, when the latter's real and personal property vests in the executor. Strictly speaking, an executor can do everything appertaining to his office (except maintain an action) before he obtains probate. In practice, however, he confines his activities before probate to

safeguarding the assets of the estate and taking the necessary steps to obtain probate. He can get in debts and collect rents, but third parties are not bound to pay him money or accept his title until he exhibits probate to them. An administrator's powers on the other hand flow from the grant of Letters of Administration and the deceased's assets vest in him only from that date.

A person named in a will as executor can decline to act, but if he wishes to do so he must clearly renounce before undertaking any executorial act. Once having obtained probate he cannot renounce except in favour of the Public Trustee with the permission of the Court. In Scotland, however, an executor may by a deed of renunciation resign his office after appointment. An executor who performs any act of administration in connection with the personal estate of the testator is personally liable to a penalty of twice the amount of estate duty if he does not prove the will within six months of the testator's death. An infant cannot act as executor and, if he is named as sole executor, an administrator with the will annexed is appointed to act during his minority.

Notwithstanding that an executor possesses such wide powers before probate, it is the custom in the ordinary course not to permit an executor to deal with the credit balances in the deceased's name or with his securities until probate has been exhibited. It is possible that a later will may come to light revoking the previous one and appointing different executors, in which case the earlier will and the executors named therein would be invalid. This general banking practice is supported by the case of *Tarn* v. *Commercial Bank of Sydney* (1884), 12 Q.B.D. 294, where executors before probate sued the bank for the return of a bill lodged by the deceased for collection. The judge said: "Bankers are in a peculiar position and when asked to pay over large sums of money to persons claiming as executors of a deceased customer, I think they are justified in requiring to be made safe by production of probate." But payments made to an executor after probate has been granted constitute a valid discharge even if the probate is afterwards revoked in favour of a later will.

When probate has been exhibited it is customary to transfer any credit balance on the deceased's account to the executors' account by means of a cheque or authority signed by all. If the deceased's account is in debit it should not be transferred into the names of the executors, for the banker would then exchange a claim against the deceased's estate for a claim against the executors personally.

A debit balance on the deceased's account should not be liquidated from credit balances on the executor's account without the latter's consent, as there is no right of set-off.

Where two or more executors are appointed, they are in law regarded as one person and the acts of any one are deemed to be the acts of all except that all proving executors must join in conveying real estate or in transferring stocks and shares. One executor may dispose of the testator's assets and so bind the others and a receipt by one for money received will be binding on his co-executors. Likewise, *in the absence of a contrary mandate*, payment to one of several executors will be a valid discharge to a banker, who cannot refuse to pay cheques drawn by any one executor. In practice, specific instructions are taken on the opening of an executorship account as to how it is to be conducted.

Executors can authorise one or more of their number to operate on the account, etc., but cannot delegate powers to outside parties.

In practice it is expedient to arrange for *all* executors to sign, so that if and when the executorship merges into a trust, there will be no irregularity on account of one or more but not all of the trustees signing. (But see *Solicitors' Journal*, 25th June, 1932, Q.2505, for an opinion that one out of two or more executors should only operate on the banking account when justified by necessity.)

Where a sole executor dies, his powers and interest pass to *his* executor. If, however, a sole executor dies intestate, his powers and interest will not devolve on his administrator, and a new grant of administration must be obtained from the Court, known as "de bonis non" (i.e. *de bonis non administratis*—of goods or assets not already administered). In the case of co-executors, on the death of one, his powers and interest vest in the survivor(s).

It is difficult to decide the point of time when executors become trustees. In the case of *In re Smith, Henderson-Roe* v. *Hitchins* (1889), 42 Ch.D. 302, the judge said: "It is the duty of the executor to clear the estate, to pay the debts, funeral and testamentary expenses and the pecuniary legacies and to hand over the assets

specifically bequeathed to the specific legatees. When all this has been done, a balance will be left in the executor's hands and I think it is plain that this balance will be held by him in trust." Where an executorship account has been open for a period ordinarily incompatible with pure executorship, inquiries should be made as to whether a trust has commenced. If this be so, the style of the account should be altered and arrangements made for all to sign if this is not already the case.

An executor cannot purchase any asset of the estate either directly or through a nominee, whether he pays full value or not, unless the sanction of the Court is obtained.

Executors have power to borrow before probate as well as after probate and such borrowings are their personal responsibility. They can in either case, however, give a specific charge over assets of the estate; they cannot charge the general estate.

Borrowing before probate is usually required for the payment of estate duty, probate fees, and funeral expenses.

Section 5 of the Finance Act, 1894, says: "A person authorised or required to pay estate duty in respect of any property, shall, for the purpose of paying the duty, have power, whether or not the property is vested in him, to raise the amount of the duty by the sale of or mortgage on that property."

Where an advance is required for probate purposes it is usual, unless the executors are known to the bank, to require an introduction from a reputable solicitor.

An undertaking is executed by all the proving executors whereby they undertake to apply the advance in payment of estate duty, etc., and to repay the advance out of the first moneys received on account of the estate. They also give a charge on the balance of the deceased's account and any of his securities that may be in the banker's hands. Strictly speaking such an advance should not be of a fluctuating nature.

Borrowings after probate are permissible for administration purposes, i.e. to pay the debts of the estate. Unless expressly given in the will, there is no power to borrow or give security for the purpose of paying legacies. Where any borrowing is allowed, the executors should charge assets of the estate—it is their personal liability and the bank cannot be a creditor of the deceased's estate.

The probate of a deceased trader or business man should be scrutinised to see if there are any directions for continuing the business. As a general rule executors have no authority in law to carry on the business save for realisation, a reasonable time being allowed to enable them to sell it to the best advantage or as a going concern. Executors are personally responsible for all debts incurred in so trading, even though they make it plain that they are acting as executors, and the creditors' remedy is against them personally and not against the estate. They are, however, entitled to be indemnified out of the assets properly employed in carrying on the business.

Executors may be empowered by the will to carry on a business for the benefit of the beneficiaries. In such a case an executor can employ only such assets as were employed in the business at the time of the testator's decease, unless the will specifically authorises otherwise.

Where the business is carried on, any creditors of the deceased can demand to be paid out of existing assets. If they assent to the carrying on of the business, however, they will rank after the creditors of the executors as regards business assets.

In *Morton* v. *Marchanton* (1930), executors were empowered by the will to carry on the business and employ private assets of the testator therein. The executors paid off the deceased's overdraft by a transfer to their account against a charge on the assets of the estate. Within two years the business was insolvent and an unpaid creditor of the deceased's estate who had assented to the carrying on of the business sought to have priority over the bank's charge. The bank contended that their charge took priority over the creditors of the deceased. It was held that in view of the deceased's creditor having acquiesced in the carrying on of the business, the bank had priority. Hence it is the rule when asked to lend money to executors for carrying on the deceased's business, to inquire if the creditors of the deceased have been paid or, alternatively, have assented to such carrying on.

(See also ADMINISTRATOR, PERSONAL REPRESENTATIVES, PROBATE.)

EXECUTOR DE SON TORT. A person who intermeddles, without authority, with the estate of a deceased person, is called an executor *de son tort*, that is, an executor of his own wrong. By the Administration of Estates Act, 1925, any person who fraudulently obtains any estate of a deceased

person shall be charged as executor in his own wrong to the extent of the estate received, after deducting any debt due to him from the deceased and any payment made by him which might properly be made by a personal representative. (Section 28.)

EXECUTOR'S YEAR. The year immediately succeeding the testator's death, during which the executor should, where practicable, realise the estate, pay death duties and debts, and provide for the legacies.

EXEMPLIFICATION. An attested or certified copy of proceedings in a court of record.

An exemplification of probate is the document issued by the Court in the event of the original probate being lost.

EXEMPT PRIVATE COMPANY. By the Companies Act, 1948, the privilege of not filing, with the annual return to the Registrar, the annual accounts of a private company is restricted to a special type of such company known as an "exempt" private company.

To qualify as such, there must not be more than fifty debenture-holders. No body corporate must be a director or shareholder or debenture-holder of the company, and neither the company nor any of its directors must be a 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. Furthermore, no person other than the holder must have any interest in any shares or debentures of the company.

Exceptions are made to this latter requirement where a banking or finance company holds shares or debentures in its name as security, and also where shares or debentures are held by executors of a deceased shareholder. Likewise, where shares or debentures are held by trustees under certain trusts or settlements, such circumstances will not rob a private company of its "exempt" character. (See Section 129 and Seventh Schedule.)

EXHIBIT. (See AFFIDAVIT.)

EXPANSIVE THEORY. The theory that in a monetary crisis the Bank of England should expand, and not contract, its issues. The Bank Charter Act of 1844 placed restrictions upon the issue of notes, but in the three great crises of 1847, 1857, and 1866 that Act had to be suspended, and, instead of the Bank restricting its issues, it was permitted by the Government to increase them beyond the amount of its authorised issue; on each occasion the application of the expansive theory saved the situation after the restrictive theory had proved to be ineffectual. On the outbreak of war with Germany in 1914, the Treasury was empowered to suspend the Act. (See BANK CHARTER ACT.)

EXPORT CREDITS GUARANTEE DEPARTMENT. This Government Department was set up after the First World War to provide British exporters with cover for a variety of risks not ordinarily insurable. Of recent years, the Department has much extended the scope of its activities, so that it now offers to indemnify exporters against a variety of misfortunes. The most popular policy relates to short-term transactions involving credits to foreign buyers up to a normal maximum of six months. This is called the Contracts Policy, and covers an exporter against seven different risks from the time he makes his export contract to the time he receives payment from his buyer. Among the risks so covered are—

(*a*) insolvency of buyer;

(*b*) failure of buyer to pay for delivered goods within twelve months of due date;

(*c*) exchange restrictions in the buyer's country preventing transfer of sterling; and

(*d*) the outbreak of war between the seller's and the buyer's countries.

As a rule, cover can be had for up to 90 per cent of the loss, but it should be noted that there is no cover against a loss arising from bad faith on the part of the importer. A Contracts Policy is normally only given to cover the *whole* of an exporter's overseas trade in goods sold for cash or on short credit up to twelve months.

Other short-term policies are the Shipments Policy, somewhat cheaper than the Contracts Policy, because it does not cover pre-shipment risks; and the E.C.G.D. (E.T.) Policy, which is designed to give partial cover to goods sold by a United Kingdom merchant, but shipped from one overseas country to another.

Guarantees are also given to cover medium term transactions up to about five years. These are needed where an exporter has undertaken to manufacture and ship capital goods requiring a considerable period to complete. Guarantee agreements for longer periods have from time to time been concluded with foreign Governments.

Premium charges vary widely according to the risks insured, but numerous policies

are taken out at rates of less than 1 per cent. Any exporter can obtain a quotation free of charge, and once his export bills are endorsed by the Department he can discount them with his bank at a fine rate.

The Department's headquarters are at 9 Clement's Lane, Lombard Street, London, E.C.4, and it has branches in several of the large provincial towns.

EXPORT SPECIE POINT. (See SPECIE POINTS.)

EXTERNAL LOAN. A public loan raised wholly, or partly, abroad, the principal and interest being payable abroad as well as in the country that issued it. (See INTERNAL LOAN.)

EXTRACT. For stamp duty, see COPY.

EXTRAORDINARY GENERAL MEETINGS. Meetings which are convened for the transaction of special business. The directors of a company shall, 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, forthwith proceed to convene an extraordinary general meeting of the company. Directors may, whenever they think fit, convene an extraordinary general meeting. (Table A, Clause 49.) For further information see Section 132 of the Companies Act, 1948, under the heading MEETINGS—COMPANIES.

EXTRAORDINARY RESOLUTION. (See RESOLUTIONS.)

FACTORS ACT, 1889 (52 & 53 VICT. c. 45). This Act deals with dispositions of goods by factors, or mercantile agents, and dispositions by sellers and buyers of goods. (See BILL OF LADING, DELIVERY ORDER, DOCK WARRANT, WAREHOUSE-KEEPER'S WARRANT.)

The principal part of the Act is as follows—

Definitions

"1. For the purposes of this Act—

"(1) The expression 'mercantile agent' shall mean a mercantile agent having in the customary course of his business as such agent authority either to sell goods, or to consign goods for the purpose of sale, or to buy goods, or to raise money on the security of goods:

"(2) A person shall be deemed to be in possession of goods or of the documents of title to goods, where the goods or documents are in his actual custody or are held by any other person subject to his control or for him or on his behalf:

"(3) The expression 'goods' shall include wares and merchandise:

"(4) The expression 'document of title' shall include any bill of lading, dock warrant, warehouse-keeper's certificate, and warrant or order for the delivery of goods, and any other document used in the ordinary course of business as proof of the possession or control of goods, or authorising or purporting to authorise, either by indorsement or by delivery, the possessor of the document to transfer or receive goods thereby represented:

'(5) The expression 'pledge' shall include any contract pledging, or giving a lien or security on, goods, whether in consideration of an original advance or of any further or continuing advance, or of any pecuniary liability:

"(6) The expression 'person' shall include any body of persons, corporate or unincorporate.

DISPOSITION BY MERCANTILE AGENTS.

Powers of Mercantile Agent with Respect to Disposition of Goods.

"2. (1) Where a mercantile agent is, with the consent of the owner, in possession of goods or of the documents of title to goods, any sale, pledge, or other disposition of the goods, made by him when acting in the ordinary course of business of a mercantile agent, shall, subject to the provisions of this Act, be as valid as if he were expressly authorised by the owner of the goods to make the same; provided that the person taking under the disposition acts in good faith, and has not at the time of the disposition notice that the person making the disposition has not authority to make the same.

"(2) Where a mercantile agent has, with the consent of the owner, been in possession of goods or of the documents of title to goods, any sale, pledge, or other disposition, which would have been valid if the consent had continued, shall be valid notwithstanding the determination of the consent; provided that the person taking under the disposition has not at the time thereof notice that the consent has been determined.

"(3) Where a mercantile agent has obtained possession of any documents of title to goods by reason of his being or having been, with the consent of the owner, in possession of the goods represented thereby, or of any other documents of title to the goods, his possession of the first-mentioned documents shall, for the purposes of this Act, be deemed to be with the consent of the owner.

"(4) For the purposes of this Act the consent of the owner shall be presumed in the absence of evidence to the contrary.

Effect of Pledges of Documents of Title.

"3. A pledge of the documents of title to goods shall be deemed to be a pledge of the goods.

Pledge for Antecedent Debt.

"4. Where a mercantile agent pledges goods as security for a debt or liability due from the pledgor to the pledgee before the time of the pledge, the pledgee shall acquire no further right to the goods than could have been enforced by the pledgor at the time of the pledge.

Rights Acquired by Exchange of Goods or Documents.

"5. The consideration necessary for the validity of a sale, pledge, or other disposition, of goods, in pursuance of this Act, may be either a payment in cash, or the delivery or transfer of other goods, or of a document of title to goods, or of a negotiable security, or any other valuable consideration; but where goods are pledged by a mercantile agent in consideration of the delivery or transfer of other goods, or of a document of title to goods, or of a negotiable security, the pledgee shall acquire no right or interest in the goods so pledged in excess of the value of the goods, documents, or security when so delivered or transferred in exchange.

Agreements Through Clerks, etc.

"6. For the purposes of this Act an agreement made with a mercantile agent through a clerk or other person authorised in the ordinary course of business to make contracts of sale or pledge on his behalf shall be deemed to be an agreement with the agent.

Provisions as to Consignors and Consignees.

"7. (1) Where the owner of goods has given possession of the goods to another person for the purpose of consignment or sale, or has shipped the goods in the name of another person, and the consignee of the goods has not had notice that such person is not the owner of the goods, the consignee shall, in respect of advances made to or for the use of such person, have the same lien on the goods as if such person were the owner of the goods, and may transfer any such lien to another person.

'(2) Nothing in this Section shall limit or affect the validity of any sale, pledge, or disposition, by a mercantile agent.

DISPOSITIONS BY SELLERS AND BUYERS OF GOODS.

Disposition by Seller Remaining in Possession.

"8. Where a person, having sold goods, continues, or is in possession of the goods or of the documents of title to the goods, the delivery or transfer by that person, or by a mercantile agent acting for him, of the goods or documents of title under any sale, pledge, or other disposition thereof, or under any agreement for sale, pledge, or other disposition thereof, to any person receiving the same in good faith and without notice of the previous sale, shall have the same effect as if the person making the delivery or transfer were expressly authorised by the owner of the goods to make the same.

Disposition by Buyer Obtaining Possession.

"9. Where a person, having bought or agreed to buy goods, obtains with the consent of the seller possession of the goods or the documents of title to the goods, the delivery or transfer, by that person or by a mercantile agent acting for him, of the goods or documents of title, under any sale, pledge, or other disposition thereof, or under any agreement for sale, pledge, or other disposition thereof, to any person receiving the same in good faith and without notice of any lien or other right of the original seller in respect of the goods, shall have the same effect as if the person making the delivery or transfer were a mercantile agent in possession of the goods or documents of title with the consent of the owner.

Effect of Transfer of Documents on Vendor's Lien or Right of Stoppage in transitu.

"10. Where a document of title to goods has been lawfully transferred to a person as a buyer or owner of the goods, and that person transfers the document to a person who takes the document in good faith and for valuable consideration, the last-mentioned transfer shall have the same effect for defeating any vendor's lien or right of stoppage *in transitu* as the transfer of a bill of lading has for defeating the right of stoppage *in transitu*.

SUPPLEMENTAL.

Mode of Transferring Documents.

"11. For the purposes of this Act, the transfer of a document may be by indorsement, or, where the document is by custom or by its express terms transferable by delivery, or makes the goods deliverable to the bearer, then by delivery.

Saving for Rights of True Owner.

"12. (1) Nothing in this Act shall authorise an agent to exceed or depart from his authority as between himself and his principal, or exempt him from any liability, civil or criminal, for so doing.

"(2) Nothing in this Act shall prevent the owner of goods from recovering the goods from an agent or his trustee

in bankruptcy at any time before the sale or pledge thereof, or shall prevent the owner of goods pledged by an agent from having the right to redeem the goods at any time before the sale thereof, on satisfying the claim for which the goods were pledged, and paying to the agent, if by him required, any money in respect of which the agent would by law be entitled to retain the goods or the documents of title thereto, or any of them, by way of lien as against the owner, or from recovering from any person with whom the goods have been pledged any balance of money remaining in his hands as the produce of the sale of the goods after deducting the amount of his lien.

"(3) Nothing in this Act shall prevent the owner of goods sold by an agent from recovering from the buyer the price agreed to be paid for the same, or any part of that price, subject to any right of set-off on the part of the buyer against the agent.

Saving for Common Law Powers of Agent.

"13. The provisions of this Act shall be construed in amplification and not in derogation of the powers exercisable by an agent independently of this Act.

Commencement.

"15. This Act shall commence and come into operation on the first day of January one thousand eight hundred and ninety.

Extent of Act.

"16. This Act shall not extend to Scotland.

Short Title.

"17. This Act may be cited as the Factors Act, 1889."

It should be noted that Section 25 of the Sale of Goods Act, 1893, is practically the same as Sections 9 and 10 of the Factors Act.

FACTORY. In Scotland, Letters of Factory empower one person to act for another.

In the Stamp Act, 1891, the reference to the stamp duty is—

FACTORY, in the nature of a letter or power of attorney in Scotland.

(See POWER OF ATTORNEY.)

FALSE PRETENCES. Where a person obtains payment of a cheque by falsely representing himself to be the payee, he is liable to be prosecuted for obtaining money by false pretences. Also if a person obtains goods and gives in payment thereof a cheque drawn upon a bank where he has no account, or gives a cheque which he knows is worthless and will not be honoured, he is likewise liable to prosecution, for whosoever shall by any false pretence obtain from any other person any chattel, money, or valuable security, with intent to defraud, shall be guilty of a misdemeanour.

FALSIFICATION OF ACCOUNTS. The Falsification of Accounts Act, 1875, provides that if any clerk, officer, or person employed shall wilfully, and with intent to defraud, destroy, alter, mutilate or falsify any book, writing, security or account which belongs to his employer, or shall wilfully, with intent to defraud, make or concur in making any false entry in, or omit or alter any material particular from any such book, document or account, the person so offending shall be guilty of a misdemeanour and be liable to penal servitude for a term not exceeding seven years, or to imprisonment for any term not exceeding two years. (See LARCENY.)

FARM STOCK. By the Agricultural Credits Act, 1928, a farmer may give a charge to a bank on the farming stock and agricultural assets belonging to him as security for sums advanced to him. (See AGRICULTURAL CREDITS ACT, 1928.)

FARTHING. (From *Feorth*, fourth.) The fourth part of a penny, a penny at one time being actually divided into four parts, called feorthlings or fourthings.

Its standard weight is 43·75 grains troy. The coin is a mixed metal of copper, tin and zinc.

Copper farthings were first issued in 1672.

FEDERAL RESERVE SYSTEM. (See CENTRAL BANKS.)

FEE. The sum of money which is to be paid for a service rendered.

The Anglo-Saxon word *feoh* (which is practically our word fee) had the meaning of money and cattle. In certain of the early stages of society, cattle performed the functions of money, hence the use of one word to express both cattle and money.

FEE FARM RENT. The name sometimes given to a chief rent (*q.v.*). The true meaning of "fee farm" is a perpetual farm or rent; such a rent is now a rent charge and the only purpose of using an expression which formerly denoted something different would

seem to be to indicate the perpetual nature of the interest granted. (Cheshire's *Modern Real Property*.)

FEE SIMPLE. The utmost interest in land a person can hold. Under the feudal system grants of land were made as a reward for military service and the land was held "in fee," i.e. as a reward for services rendered. Such grants in fee were originally for life only but later were extended to include the sons of the first grantee and the interest was then called a "fee simple."

A "fee simple" estate in land can only terminate upon the death of the owner intestate and leaving no persons entitled on intestacy, in which case it passes to the Crown.

A conveyance of a freehold to a purchaser in fee simple used to contain such words as "To hold unto and to the use of the purchaser in fee simple," or, what has the same effect, "to the use of the purchaser his heirs and assigns for ever."

From 1st January, 1926, by the Law of Property Act, 1925, the words "heirs" or "in fee simple" need not be used in a conveyance, as a conveyance of freehold land without words of limitation passes the fee simple, unless a contrary intention appears in the deed. (Section 60.)

By the same Act the only legal estates which are capable of existing are—

(1) An estate in fee simple absolute in possession. (Freehold.)

(2) A term of years absolute. (Leasehold.)

When an estate in fee simple is mortgaged the mortgagor retains the fee simple and the mortgagee takes a term of years absolute. Both are "estate owners," as each has a legal estate.

A legal estate may subsist concurrently with or subject to any other legal estate in the same land. (See LEGAL ESTATES, MORTGAGE.)

FEE TAIL. ("Tail" is from the French *tailler*, to cut.) An estate which is granted to a person and the heirs of his body is an estate tail or fee tail, usually called an entailed estate. It is the opposite to a fee simple (*q.v.*). A fee simple was held to his heirs, but a fee tail was limited to the heirs of his body. On 1st January, 1926, any legal estate tail then existing was converted into an equitable estate. (See ESTATE TAIL.)

FEME-COVERT. A married woman. *Covert* means literally "sheltered," a wife being in former days sheltered by her husband from certain legal liabilities from which she would not have been exempt if unmarried.

FEME-SOLE. An unmarried woman.

FEOFFMENT. (Pronounced *fef'-ment.*) An ancient method of conveyance of property. Feoffment was accompanied by actually handing over the possession of the land, as by the delivery of a piece of turf, or by the grantor vacating the land and the grantee taking possession. This delivery of possession was called "livery of seisin." The person delivering it was called the feoffor and the person receiving it the feoffee. (See LEASE AND RELEASE.)

FEU CONTRACT. In Scotland, a contract between a superior and his vassal respecting the giving of land in feu; feu being a tenure where the vassal holds lands from the superior and, instead of performing military service, makes an annual return in grain or money.

In the Stamp Act, 1891, the reference to the stamp duty is—

FEU CONTRACT in Scotland. See CONVEYANCE ON SALE.

FI. FA. A contraction of *fieri facias* (*q.v.*).

FICTITIOUS PAYEE. Where the payee is a fictitious or non-existing person, a bill or cheque may be treated as payable to bearer. (Section 7 (3), Bills of Exchange Act, 1882.) In *Bank of England* v. *Vagliano*, [1891] A.C. 107, the meaning of a fictitious person was enlarged to include a real person who never had nor was intended to have any right to the bills. Lord Herschell said in the course of his judgment: "I have arrived at the conclusion that whenever the name inserted as that of the payee is so inserted by way of pretence merely, without any intention that payment shall only be made in conformity therewith, the payee is a fictitious person within the meaning of the statute, whether the name be that of an existing person or of one who has no existence."

An instrument payable to "wages" or "cash," or some similar word is payable to an impersonal payee and does not come within the above section. An impersonal payee is not the same as a fictitious person. (See IMPERSONAL PAYEE.)

FIDELITY GUARANTEE. A guarantee by a person or a society to make good, up to a specified amount, any loss caused by the default of the individual guaranteed.

The Bankers' Guarantee Trust for the mutual guarantee of bank officials employed in the United Kingdom was absorbed by an insurance company in 1919.

Large banks usually have their own guarantee fund for the purpose of securing the bank against losses arising through

fraud or dishonesty on the part of any of the persons employed. The officers of the bank subscribe to the fund according to the amount for which they are guaranteed.

Where an employee is guaranteed by a society the policy usually provides that the defaulter must, if possible, be prosecuted before the society will pay the amount of the guarantee.

FIDUCIARY CAPACITY. (Latin, *fiducia*, confidence.) A person who holds anything in trust for another is said to hold it in a fiduciary capacity.

When a banker has notice that certain moneys deposited with him are of a fiduciary nature, he must not, knowingly, be a party to any wrongful use of such moneys, otherwise he will be responsible to the person entitled to the moneys. A banker cannot be held liable when he is unaware that they are trust moneys. (See TRUSTEE.)

FIDUCIARY ISSUE. That part of the note issue of the Bank of England which is authorised to be made against securities as opposed to a metallic backing.

The fiduciary issue was instituted by the Bank Charter Act, 1844 (*q.v.*), and its amount was fixed at £14,000,000. The securities which backed it comprised the Government debt to the Bank of £11,015,100, the balance, £2,984,900, being convertible securities.

The Bank of England was authorised to increase the fiduciary issue by taking up two-thirds of the issues of other note-issuing banks, as their issues lapsed in accordance with the Act on account of amalgamations and absorptions. By 1923, the fiduciary issue had thus grown to £19,750,000, by which time no other banks of issue remained in England and Wales.

In 1928 the Currency and Bank Notes Act transferred the currency note issue of the Treasury to the Bank of England, and consequently the latter's fiduciary issue was raised to £260,000,000—a figure which approximated to the combined maximum fiduciary issue of the Bank of England and the Treasury for 1927. Provision was made in the Act for the Treasury to sanction a reduction in the fiduciary issue. By Section 8, on application by the Bank of England, the Treasury could permit an increase for an initial period of six months, renewable from time to time, provided that any increase beyond two years required parliamentary sanction. Moreover, the Treasury minute authorising any increase had to be laid before both Houses of Parliament. Finally, the Act provided that the fiduciary issue must be backed by securities which could include £5,500,000 of silver. On the outbreak of war in 1939, the Currency (Defence) Act (*q.v.*) increased the fiduciary issue to £580,000,000, as a result of the transfer of £280,000,000 of gold backing to the Exchange Equalisation Account.

In August, 1941, Defence (Finance) Regulation 7 A.A. extended the maximum period of increase without parliamentary sanction from two to four years; and in August, 1943, an amendment to this Regulation further increased the period to six years. Finally, to avoid further legislation, in September, 1945 (i.e. six years from September, 1939), a further Defence (Finance) Regulation was made (S.R. & O., 1945/1001), enlarging the period of excess over the statutory figure of £260,000,000, without parliamentary sanction, to the life of the Emergency Powers (Defence) Act, 1945.

Below are the movements of the fiduciary issue since the passing of the Currency and Bank Notes Act, 1928.

	£ *Million*
22nd Nov., 1928	260
6th Jan., 1939, increased to	400
1st Mar., 1939, reduced to	300
6th Sept., 1939, increased to	580
12th June, 1940, ,,	630
2nd Dec., 1941, ,,	780
29th July, 1942, ,,	880
8th Dec., 1943, ,,	1,100
2nd Aug., 1944, ,,	1,200
4th July, 1945, ,,	1,350
10th Dec., 1946, ,,	1,450
4th Feb., 1948, reduced to	1,350
25th Sept., 1949, ,,	1,300
12th Dec., 1950, increased to	1,375
31st July, 1951, ,,	1,425
16th Jan., 1952, reduced to	1,400
25th June, 1952, increased to	1,500
24th Dec., 1952, ,,	1,575
14th Jan., 1953, reduced to	1,500
3rd June, 1953, increased to	1,600
26th Aug., 1953, reduced to	1,575
16th Dec., 1953, increased to	1,675
6th Jan., 1954, reduced to	1,625
13th Jan., 1954, ,,	1,600
27th Jan., 1954, ,,	1,575
17th Mar., 1954, increased to	1,625
2nd June, 1954, ,,	1,675
14th July, 1954, ,,	1,725
28th July, 1954, ,,	1,750
18th Aug., 1954, reduced to	1,700
1st Sept., 1954, ,,	1,675

FIERI FACIAS. A writ of *fieri facias*, often abbreviated as fi. fa., takes its name from the words appearing in the document "*quod fieri facias de bonis*," etc. The writ is issued on behalf of a creditor who has obtained judgment for a debt, ordering the sheriff to levy the amount on the goods of the debtor. Bank-notes, money, cheques,

and bills are included amongst the things which the sheriff may seize.

FILING PETITION. (See RECEIVING ORDER.)

FINANCE ACT. A Finance Act is passed annually by Parliament to give statutory effect to the proposals of the Government as to taxation, duties, etc.

FINANCE CORPORATION FOR INDUSTRY. A private finance company sponsored by the Government under the ægis of the Bank of England in 1945 for long-term advances of magnitude to business concerns. It has a capital of £25,000,000 and borrowing powers of four times that amount. The share capital was provided by insurance companies, investment trusts, and the Bank of England. At the end of its first year it had lent but £250,000, with further commitments of £1,250,000. This slow start was due to uncertainties as to the nationalisation programme and the inevitable delays in long-term planning.

A similar corporation for smaller concerns was formed at the same time in the shape of the Industrial and Commercial Finance Corporation (*q.v.*).

FINE PAPER. Bills which are drawn upon banks or first-class firms.

FINENESS OF COINS. The "fineness" is the amount of fine or pure metal in a coin. The standard fineness of gold and silver coins is specified in the first schedule to the Coinage Act, 1870, as amended by the Acts of 1891 and 1920. (See COINAGE.)

FIRE INSURANCE. Fire insurance is a contract of indemnity under which an insurance company agrees, in consideration of the premium paid, to make good any loss or damage by fire during a specified time. The insured person must have a pecuniary interest in the subject matter of the contract. The legal instrument by which the contract is made and reduced to form is called the policy.

In order to prevent a security over buildings disappearing in smoke a banker should be careful to see that the property is insured, and that the premiums are duly paid. The premiums should be paid before the expiration of the days of grace, that is, usually fifteen days from the date when the amount is due to be paid and the receipts should be exhibited, or handed over, to the banker.

Where property is charged as security the fire insurance policy is lodged with the bank, sometimes it is in the joint names of the borrower and the bank as mortgagee; sometimes the bank's interest is indorsed by the company on the policy, and sometimes notice is given to the company of the bank's interest, and the company's acknowledgment is filed with the policy.

Where the bank's interest is notified to the company in any of the foregoing ways, the company will honour its policy as far as the bank is concerned notwithstanding that the mortgagor has committed arson.

In a banker's mortgage of property the mortgagor should covenant—

To insure the buildings against loss by fire for their full value in such office as the banker may approve;

To pay all premiums when due;

To produce, on demand, the policy and premium receipts;

To apply all moneys received under the policy in making good the damage, or in reducing the debt to the banker.

A provision should also be made that, if the mortgagor fails to keep the premises insured, the banker may insure them—the mortgagor paying all the premiums.

An authority in writing may be given to the banker to pay the premiums as they become due and to debit the amounts to the customer's account.

An insurer cannot recover more than the actual loss sustained from a fire, within the amount of the policy. If the same property is insured in several offices, each company will only pay its proportion of any loss.

Where a borrower effects additional insurance unknown to the mortgagee, he is not bound to pay over moneys received under the second policy to the latter, notwithstanding that the amount receivable by the mortgagee under the first policy is diminished by reason of the existence of the second policy. (*Halifax Building Society & Another* v. *Keighley & Another*, [1931] 2 K.B. 248.) Hence it is desirable for a mortgagor to bind himself to hold any moneys received under a policy negotiated behind the mortgagee's back in trust for the latter.

As soon as a person has signed a contract to purchase a house he becomes liable for the insurance, and he will be obliged to complete the purchase, even if the house is destroyed by fire before the date fixed for completing the purchase. A purchaser should therefore insure the house as soon as he has signed the contract. If the vendor had the house insured that would not (unless the policy had been transferred to the purchaser with the consent of the company) benefit the purchaser. A contract of insurance indemnifies the insured against

loss, and as the insured had sold the house he would not suffer any loss by the fire. The loss would fall upon the purchaser.

By the Law of Property Act, 1925, Section 47—

"(1) Where after the date of any contract for sale or exchange of property, money becomes payable under any policy of insurance maintained by the vendor in respect of any damage to or destruction of property included in the contract, the money shall, on completion of the contract, be held or receivable by the vendor on behalf of the purchaser and paid by the vendor to the purchaser on completion of the sale or exchange, or so soon thereafter as the same shall be received by the vendor."

This Section applies only to contracts made after 1st January, 1926, and is subject to—

(*a*) any stipulation to the contrary in the contract,

(*b*) any requisite consents of the insurers,

(*c*) the payment by the purchaser of the proportionate part of the premium from the date of the contract. (s.s. 2.)

If the "consents of the insurers" are not obtained, it would appear that the position of a purchaser will continue as in the paragraph above.

If a fire policy includes an average clause, the insurance company is liable to pay only such proportion of the loss by fire as the amount insured bore to the full value of the property. It is not the usual custom, however, in an English policy to insert such a clause where the property insured is an ordinary dwelling-house. A perusal of the policy will show whether, or not, an average clause is included.

A "Cover" note is a note issued by an insurance company, when the first premium has been paid, declaring, in the case of a proposal for insurance against fire, that the proposer is covered in the meantime until the policy is issued.

"Consequential Loss Insurance" is an insurance against additional losses which may occur in consequence of a fire such as the cost of obtaining temporary premises, loss through the dislocation of business, etc.

The stamp duty on a policy is sixpence (increased from 1d. to 6d. by the Finance Act, 1920). (See POLICY OF INSURANCE, AVERAGE CLAUSE.)

FIRM. Persons who have entered into partnership with one another are, collectively, called a firm, and the name under which their business is carried on is called the firm-name.

Firms which carry on business under a name which does not consist of the true surnames of the partners must be registered under the Registration of Business Names Act, 1916. (See REGISTRATION OF BUSINESS NAMES.)

In Scotland a firm is a legal person distinct from the partners.

A firm must not consist of more than twenty partners, and in the case of a banking firm of more than ten partners. (See PARTNERSHIPS.)

FIRST AND IN NEED WITH. By Section 15 of the Bills of Exchange Act, 1882, the drawer of a bill and any indorser may insert therein the name of a person to whom the holder may resort in case of need, that is, to say, in case the bill is dishonoured by non-acceptance or non-payment. Accordingly, where a foreign bill is drawn in a set, say in two parts, one part may be sent at once to the drawee for acceptance, and the other part may be negotiated and bear a reference upon the face of it that the accepted part is in the possession of certain agents, as "First and in need with the British Bank, Ltd., London." If the bill is dishonoured, the agents named will, after it has been protested for non-payment, pay the bill for the honour of their principal.

FIRST-CLASS PAPER. Treasury Bills and bills which bear the names of banks and financial houses of the very highest standing.

FIRST MORTGAGE. A charge upon property which takes priority to any other charges. (See LEGAL MORTGAGE, MORTGAGE.)

FIRST OF EXCHANGE. (See BILL IN A SET.)

FIVE-POUND PIECE. It was first coined for circulation in 1887, though it was provided for in the first schedule to the Coinage Act, 1870, now obsolete. (See COINAGE.)

FIXED ASSETS. Assets (such as land, buildings, plant, machinery), which are not turned into cash, but are used indirectly for the purpose of providing the income of a business. Assets which are fixed assets in connection with one business, may in another business be floating assets, e.g. the plant and machinery which are used by a company to produce certain goods are fixed assets, but where the machines themselves are made in order to be sold they are circulating or floating assets. (See BALANCE SHEET.)

FIXED CAPITAL. Capital which is sunk in the purchase of land, or in buildings, the construction of railways, cutting of canals, etc., and which produces its effect by being kept, and not parted with, as in the case of circulating capital. "Capital," says John Stuart Mill, "which exists in any of these durable shapes and the return to which is spread over a period of corresponding duration, is called Fixed Capital." Some kinds of fixed capital require to be occasionally or periodically repaired or renewed, but these improvements "by the very fact of their deserving that title, produce an increase of return, which, after defraying all expenditure necessary for keeping them up, still leaves a surplus. This surplus forms the return to the capital sunk in the first instance, and that return does not, as in the case of machinery, terminate by the wearing out of the machine, but continues for ever." Lord Justice Buckley defined fixed capital as "property acquired and intended for retention and employment with a view to profit, as distinguished from circulating capital, meaning property acquired or produced with a view to re-sale or sale at a profit." (See BALANCE SHEET, CAPITAL.)

FIXED CHARGE. Debentures and debenture stock may be secured on the property of the company by a "fixed" charge, or by a "floating" charge. In a fixed charge the property is, sometimes, by a trust deed, vested in trustees for the debenture holders or debenture stockholders, so that no other person may obtain a prior charge. The company cannot deal in any way with the property covered by a fixed charge without the consent of the chargees. (See DEBENTURE, FLOATING CHARGE.)

FIXED DEPOSIT. A deposite of a definite sum for a fixed period at a fixed rate. Long-term fixed deposits bear a higher rate of interest than deposits at call or short notice. Where lodged for periods of twelve months or more, the banker must deduct income tax from the interest payable. Fixed deposits are principally taken by the Colonial and Indian banks.

FIXED TRUSTS. A Unit trust whose trust deed provides for a fixed portfolio of investments for the lifetime of the trust, save in exceptional circumstances such as a decreased dividend, cessation of quotations, etc., when elimination is permitted. In April, 1937, of seventy-two unit trusts in existence, fifty-one were of the fixed type. (See UNIT TRUSTS.)

FIXTURES. As a general rule whatever is affixed to a freehold by a lessee or tenant becomes part of the freehold and cannot be removed without the permission of the landlord; but in the case of a lessee who has fixed plant or machinery for the purposes of his business there is an exception, as he is entitled, as against the landlord, to remove the same during his tenancy, provided that it is not contrary to the terms in his contract of tenancy and that trade fixtures can be removed without causing material injury to the building.

A mortgagor, however, cannot remove fixtures from a property as against a mortgagee, even though they are of such a nature as to be removable as between landlord and tenant.

A deposit of title deeds, as well as a legal mortgage, carries with it the right of the mortgagee to any fixtures there may be on the property.

The Bills of Sale Act, 1878, provides that the expression "personal chattels" shall mean goods, furniture, and other articles capable of complete transfer by delivery, and (when separately assigned or charged) fixtures and growing crops, but shall not include chattel interests in real estate, nor fixtures (except trade machinery as hereinafter defined), when assigned together with a freehold or leasehold interest in any land or building to which they are affixed. (Section 4.) By Section 5 "From and after the commencement of this Act trade machinery shall, for the purposes of this Act, be deemed to be personal chattels, and any mode of disposition of trade machinery by the owner thereof which would be a bill of sale as to any other personal chattels shall be deemed to be a bill of sale within the meaning of this Act.

"For the purposes of this Act—

'Trade machinery' means the machinery used in or attached to any factory or workshop;

"(1) Exclusive of the fixed motive powers such as the water-wheels and steam engines, and the steam boilers, donkey-engines, and other fixed appurtenances of the said motive-powers; and,

"(2) Exclusive of the fixed power machinery, such as the shafts, wheels, drums, and their fixed appurtenances, which transmit the action of the motive-powers to the other machinery, fixed and loose; and,

"(3) Exclusive of the pipes for steam,

gas, and water in the factory or workshop.

"The machinery or effects excluded by this section from the definition of trade machinery shall not be deemed to be personal chattels within the meaning of this Act."

A deed, therefore, by which fixtures (other than trade fixtures) are separately assigned must be registered as a bill of sale, as must also a deed which assigns fixed trade machinery, whether assigned separately or not. If, however, the trade machinery is assigned, not as chattels, but as part of the freehold to which it is affixed, the deed does not require registration under the Bills of Sale Act.

In *Batcheldor* v. *Yates* (1888), 57 L.J. Ch. 697, there was a mortgage of freehold property on which there happened to be some trade machinery—Cotton, L.J., in his judgment said: "The instrument is a conveyance of land, and although that does give a right to all fixtures on the land, including this trade machinery, yet it does so, not as an assurance of that trade machinery, or of those things which the Act says are to be considered as personal chattels, but merely as conveying and assigning all the land, and everthing so fixed to the freehold as to be passed by a conveyance of the land. It does not enable the mortgagee, within the meaning of Section 3, to seize or take possession of these personal chattels. It enables him to take possession of the land, and he thereby has possession of the trade machinery as part of the land, but in no other way.

"In this mortgage there is no right at all on the part of the mortgagee to sever these fixtures from the land. He could only do so if empowered by the terms of the power of sale so to do. The mortgage is a mere ordinary mortgage, referring, it is true, to the land, the workshop, and the yard, but not in any way dealing either with the house, or with the workshop, or the machinery as anything to be separated from, or severed, or capable of being severed, from the freehold to which it is affixed. . . . In my opinion it would be wrong to say that such a mortgage as this was a bill of sale of the trade machinery, even although the Act does declare that trade machinery is to be considered for the purpose of the Act personal chattels."

The above quoted case of *Batcheldor* v. *Yates* does not apply when there is an express assignment of chattels, as chattels, and not as incident to the land. Where land was conveyed by a mortgage together with fixed and movable plant, machinery, fixtures, etc., the deed has been held to be a bill of sale as regards the trade machinery and to require registration as such. (*Small* v. *National Provincial Bank of England*, [1894] 1 Ch. 686.)

The question as to whether certain things are or are not trade fixtures has frequently been the cause of litigation.

FLEXIBLE TRUSTS. Unit trusts whose trust deeds permit of changes being made in the portfolio of underlying securities at the instance of the management company and usually with the approval of the trustee company. In most cases the selection of a new security must be made from a predetermined panel of selected investments. In April, 1937, of seventy-two unit trusts, twenty-one were of the flexible variety. (See UNIT TRUSTS.)

FLOATERS. A term used to signify the first-class bearer securities, e.g. Exchequer Bonds, Treasury Bills, and Bonds, etc., which bill brokers deposit with banks against money lent to them at call. When the money is called in by one bank the broker must borrow from another, and thus his securities move or "float" about from one bank to another.

An important judgment was given (June, 1912), in *Lloyds Bank, Ltd., and Union of London and Smith's Bank, Ltd.* v. *Swiss Bankverein* (1912), 107, L.T. 309, where the plaintiffs contended for a custom whereby "floaters," when released from pledge with the bank on presentation of a cheque, remained the property of the bank until the cheque was met.

Hamilton, J., in the course of his judgment said: "On 15th September, 1911, there fell due for payment by E. Hellings & Co. to the plaintiff banks, two large loans of short money against security, and on the morning of that day Hellings gave to the two banks cheques for the amount due, which were subsequently dishonoured, and received respectively from the two banks the securities which had been deposited to secure the loans when they were first made. Later in the same day the defendant bank received from Hellings on two separate occasions, but on each occasion, as a fact, with the assent of the senior partner in the firm and another, certain of these securities which they had received in the morning from the plaintiffs. The whole of the instruments in question in this action are negotiable instruments, and

most of them are bearer bonds." The plaintiffs claimed to have been *bona fide* holders for value whose effective retention of the securities was never determined, and the defendants disputed that the plaintiffs were any longer entitled to the securities, and alleged that in any case they themselves were also *bona fide* holders of the securities for value and without notice. "The plaintiffs say: There is a practice of bankers which either has the efficacy of custom or to which the law must attach the significance of a trust, under which Hellings, still being in possession of those securities, and his cheques not yet having been met, held them as custodian for us, intended, no doubt, with an authority to negotiate them for value, but he had not exercised that authority." Hamilton, J., came to the conclusion that it is not the natural or the necessary construction to put upon the transaction "that these bonds are impressed with a trust, and that there is a right to follow the proceeds of the trust instrument. That being so, I think it follows, that as soon as the plaintiffs parted with their securities, they ceased to be able to make any claim to them in this action, and that their claim must fail."

The above decision was affirmed by the Court of Appeal (1913), 108 L.T. 143. Farwell, L.J., said: "The appellants entirely fail to prove the existence of any trust at all." "The evidence shows that this was an ordinary business transaction on credit; the bankers gave up their securities and took the broker's cheque, and the risk was theirs on the broker's cheque." "The very idea of impressing negotiable instruments with a vendor's lien or implied trust is utterly repugnant to their nature."

FLOATING ASSETS. Assets such as cash, stock, bills of exchange, which are continually changing as opposed to fixed assets such as premises, plant and machinery, etc.

FLOATING CAPITAL. (See CAPITAL.)

FLOATING CHARGE. A floating charge has been defined by Lord Macnaghten as "an equitable charge on the assets for the time being of a going concern. It attaches to the subject charged in the varying condition in which 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."

Debentures or debenture stock, in addition to being secured by a "fixed" charge upon the company's property, may also be secured by a "floating" charge, that is a charge upon the stock, book debts, etc., of the company, which permits the company to make use of those assets in any way in connection with its ordinary business. A charge of that description "floats" until such time as default is made in payment of interest, or the company goes into liquidation, or breaks some other condition of the debenture. When such an event occurs, the charge becomes "fixed," and the assets at that date become a fixed security for the debentures and may be realised for the benefit of the debenture holders. (See DEBENTURE.)

If the debentures create a "floating" charge upon the land of the company, as well as upon the stock, book debts, and uncalled capital, the company is not precluded by that floating charge from selling or mortgaging the land. Some "floating" charges, however, contain a clause to the effect that the company will not mortgage the property so as to create an equal or prior charge, but even in that case if anyone grants the company a loan against the title deeds, without any notice of the condition, he may obtain priority "under the doctrine that where the mortgagor has ostensible authority to deal with the property all dealings with a *bona fide* mortgagee are valid." (Jordan's *Handbook on Joint Stock Companies.*)

Likewise a lender, aware of the floating charge but unaware of such a clause therein, will get priority. Hence, when registering a floating charge, it is expedient to include in the details of registration any such clause, as this will be notice to subsequent lenders.

In *National Provincial Bank of England* v. *United Electric Theatres, Ltd.*, [1916] 1 Ch. 132, Astbury, J., quoted with approval the words of Romer, L.J., in a case in the Court of Appeal, in which he stated that "a mortgage or charge by a company which contained the three following characteristics is a floating charge; (1) If it is a charge on a class of assets of a company present and future; (2) if that class is one which, in the ordinary course of the business of the company, would be changing from time to time; and (3) if you find that by the charge it is contemplated that, until some future step is taken by or on behalf of those interested in the charge, the company may carry on its business in the ordinary way as far as concerns the particular class of assets I am dealing with." The words of Lord Macnaghten in the House of Lords were also quoted with

approval: "A specific charge is one that without more fastens on ascertained and definite property, or property capable of being ascertained and defined; a floating charge, on the other hand, is ambulatory and shifting in its nature, hovering over and, so to speak, floating with the property which it is intended to affect until some event occurs or some act is done which causes it to settle and fasten on the subject of the charge within its reach and grasp."

Particulars of every floating charge on the undertaking and property of a company must be delivered to the registrar of companies for registration. (See REGISTRATION OF MORTGAGES.) By the Companies Act, 1948, all floating charges on the undertaking or any property of the company must be entered in the company's register of mortgages. (Section 104.)

Where a company goes into liquidation within twelve months of the creation of a floating charge, such charge will be invalid except in respect of cash paid to the company subsequent to the creation of and in consideration of the charge, unless it can be shown that the company was solvent immediately after the creation of the charge. (Companies Act, 1948, Section 322.)

But if, by the application of the Rule in *Clayton's* case, it can be shown that the balance due at the time of liquidation is money lent subsequent to the creation of the charge (i.e. where subsequent credits paid in equal or exceed the debt at the time the charge was given), the charge will not be invalid. (*In re Thomas Mortimer, Ltd.* (1925).)

FLOATING DEBT. That part of the internal national debt made up of short term loans, national savings certificates, treasury bills, ways and means advances from government departments and the Bank of England, and Treasury Deposit Receipts. (See UNFUNDED DEBT.)

FLOATING MONEY. Temporary surplus funds in the hands of bankers, for which no profitable employment can be found owing to the money market being already fully supplied. This floating money finds its way to the bankers' accounts at the Bank of England, and goes to increase the item "Other Deposits" in the Bank Return, until a suitable outlet offers. A glutted condition of this kind arises on the periodical payment of large Government and other dividends and during times when there is little demand for money. A low market rate is the natural result.

FLOATING POLICY. (See MARINE INSURANCE POLICY.)

FLORIN. A two-shilling piece. (From Latin *flos, floris*, a flower. Italian *fiorino*, a florin, so called because there was the figure of a lily upon it. It is also stated that the coin is named from the city of Florence where florins were first coined.) It was introduced into the coinage in 1849.

The standard weight of a florin is 174·54545 grains troy and its standard fineness thirty-seven-fortieths fine silver, three fortieths alloy; altered by the Coinage Act, 1920, to one-half fine silver, one-half alloy. Now issued as a cupro-nickel coin. (See COINAGE.)

FOR CASH. A transaction on the Stock Exchange which is "for cash" or "for money" means that the security which has been sold must, as soon as delivered, be paid for in cash. (See FOR THE ACCOUNT.)

FOR THE ACCOUNT. A transaction on the Stock Exchange may be "for the account," that is, for settlement on the next "account day" or "settling day." (See FOR CASH.)

FORECLOSURE. Where a mortgagor has failed, after due notice, to make repayment of the mortgage debt, the mortgagee has the right to apply to the Court for an order for foreclosure.

After 1925 a mortgage is created by vesting the land in the mortgagee for a term of years absolute, the mortgagor retaining, in the case of freeholds, the legal fee simple (not merely an equity of redemption as formerly). The mortgage is made subject to a provision for cesser on redemption. When the money is repaid the mortgage becomes a satisfied term and ceases.

When a mortgagee of freeholds obtains an order for foreclosure absolute, the order operates to vest the fee simple in him (subject to any prior legal mortgage) and the mortgage term is thereby merged in the fee simple, and any subsequent mortgage is extinguished. (Section 88, Law of Property Act, 1925.) In a case of leaseholds the order vests the leasehold interest in the mortgagee. (Section 89.)

Neither a legal mortgagee nor an equitable mortgagee can foreclose without sanction of the Court. A legal mortgagee can, however, sell the property or put in a receiver under the power contained in his mortgage deed, but see Section 110 under MORTGAGE.

The expression "redeem up, foreclose down" applies when a mortgagee makes application to the Court for foreclosure, as he forecloses any subsequent mortgagees, as

well as the mortgagor, and redeems any prior mortgagee.

Application for foreclosure must be made within twelve years from the last payment of interest by the mortgagor or written acknowledgment of the debt.

Where a mortgagee remains in possession of the property and receives the rents for twelve years after default is made under the mortgage, and does not during that time acknowledge in writing the title of the mortgagor or his right to redeem, foreclosure takes place by the lapse of time and the mortgagor's right to redeem is extinguished at the end of the twelve years.

Where a mortgagee forecloses and thus becomes absolute owner of the property, he has no further claim upon the mortgagor. But if a mortgagee sells the property, instead of foreclosing, he may claim upon the mortgagor if the proceeds of the sale are not sufficient to repay the mortgage debt, and the mortgage—as is usual—contains a personal covenant on the mortgagor's part to repay the mortgage debt. (See MORTGAGE.)

FOREIGN BANK NOTES. These are often subject to various forms of exchange restrictions (*q.v.*). A banker's buying rate for foreign bank notes will be more unfavourable to the seller than his cheque buying rate, since he must allow for postage and insurance in transit to the country of origin.

FOREIGN BILL. The Bills of Exchange Act, 1882 (Section 4), defines an inland bill as a bill which is or on the face of it purports to be (*a*) both drawn and payable within the British Islands, or (*b*) drawn within the British Islands upon some person resident therein. Any other bill is a foreign bill. The British Islands mean any part of the United Kingdom of Great Britain and Ireland, the islands of Man, Guernsey, Jersey, Alderney and Sark, and the islands adjacent to any of them being part of the dominions of His Majesty, and a bill drawn in any of those places is an inland bill, but for the purposes of stamp duty a bill or note purporting to be drawn out of the United Kingdom (the Isle of Man and the Channel Islands are out of the United Kingdom) is deemed, by the Stamp Act, 1891, Section 36, to be a foreign bill.

Since the formation of the Irish Free State the above definition of "British Islands" has been modified by Section 2 of Statutory Rules and Orders, 1923, No. 405, as follows: "Subject to the provisions of this Order and of any subsequent Order in Council made under Section 6 of the Irish Free State (Consequential Provisions) Act, 1922, reference in any enactment passed before the establishment of the Irish Free State to 'the United Kingdom,' or 'Great Britain and Ireland,' or the 'British Islands' or 'Ireland' shall, in the application of the enactment to any part of Great Britain and Ireland other than the Irish Free State, be construed as exclusive of the Irish Free State." A bill, therefore, that is drawn in the Irish Free State (now known as "Eire") and payable in England is a foreign bill within the meaning of the Bills of Exchange Act. As to the stamp duty on a bill drawn in Eire and negotiated in England, or *vice versa*, "an instrument chargeable with stamp duty in both countries and stamped in either country will, to the extent of the duty it bears, be deemed to be stamped in the other country." (See under BILL OF EXCHANGE.)

The regulations regarding bills are not the same in all countries and the Bills of Exchange Act in Section 72 sets forth the rules to be observed where laws conflict—

"Where a bill drawn in one country is negotiated, accepted, or payable in another, the rights, duties, and liabilities of the parties thereto are determined as follows:

"(1) The validity of a bill as regards requisites in form is determined by the law of the place of issue, and the validity as regards requisites in form of the supervening contracts, such as acceptance, or indorsement, or acceptance *supra* protest, is determined by the law of the place where such contract was made:

"Provided that—

"(*a*) Where a bill is issued out of the United Kingdom it is not invalid by reason only that it is not stamped in accordance with the law of the place of issue:

"(*b*) Where a bill, issued out of the United Kingdom, conforms, as regards requisites in form, to the law of the United Kingdom, it may, for the purpose of enforcing payment thereof, be treated as valid as between all persons who negotiate, hold, or become parties to it in the United Kingdom.

"(2) Subject to the provisions of this Act, the interpretation of the drawing, indorsement, acceptance, or acceptance *supra* protest of a bill is

determined by the law of the place where such contract is made.

Provided that where an inland bill is indorsed in a foreign country the indorsement shall as regards the payer be interpreted according to the law of the United Kingdom.

"(3) The duties of the holder with respect to presentment for acceptance or payment and the necessity for or sufficiency of a protest or notice of dishonour, or otherwise, are determined by the law of the place where the act is done or the bill is dishonoured.

"(4) Where a bill is drawn out of but payable in the United Kingdom and the sum payable is not expressed in the currency of the United Kingdom, the amount shall, in the absence of some express stipulation, be calculated according to the rate of exchange for sight drafts at the place of payment on the day the bill is payable.

"(5) Where a bill is drawn in one country and is payable in another, the due date thereof is determined according to the law of the place where it is payable."

A foreign bill may be drawn in this country and be payable abroad, e.g. where goods are exported from England to America the exporter may draw a bill upon his correspondent in America for the value of the goods.

Bills payable abroad are either collected by bankers for their customers or else bought (or discounted or negotiated).

The following are specimens of foreign bills—

No. Copenhagen , 19 .

£5

At ten days from date pay this first of exchange to the order of John Jones five pounds sterling, value received, which place to account as per advice.

To R. Brown.

J. Jackson,
London.

Payable in London. Due

No.

Las Palmas,

£200. , 19 .

At thirty days after sight of this first of exchange (second unpaid) pay to the order of John Jones the sum of two hundred pounds sterling, value received, which amount place with or without further advice to the account of the steamer *Britannia*.

J. Brown.

To X & Y Steamship Co., Ltd.,
Hull.

London.....19 .

Exchange for £500.

Sixty days after sight of this first of exchange (second and third of the same tenor and date unpaid), pay to the order of John Jones, five hundred pounds, exchange as per indorsement, value received, which place to account as advised. The shipping documents attached to be surrendered against acceptance.

John Brown.

To R. Robinson & Co.,
New York.

A foreign bill drawn in this country in sterling may include the words "exchange as per indorsement." The rate is indorsed on the bill in London when first negotiated and constitutes the rate at which the bill is payable. (See Exchange as Per Indorsement.)

It is considered that a bill or promissory note which includes the words "plus bank charges and stamps" is not a valid bill of exchange within the meaning of Sections 3 and 83 of the Bills of Exchange Act, 1882. The Act prescribes that a bill or note must be drawn for "a sum certain in money." In the opinion of Mr. James Wylie, C.B.E. (see *Journal of the Institute of Bankers*, October, 1930): "I think it highly probable that the Court would decide that any words making the amount uncertain, whether written in the main operative part of the instrument or added by way of memorandum, note or indorsement, are to be taken as part of the instrument and render it void as a bill or note."

As to a bill which contains an interest clause, see under Interest on Bill.

Where a foreign bill, appearing on the face of it to be such, has been dishonoured by non-acceptance, it must be duly protested for non-acceptance, and where such a bill, which has not been previously dishonoured by non-acceptance is dishonoured by non-payment it must be duly protested for non-payment. If it be not so protested the drawer and indorsers are discharged (Section 51 (2), Bills of Exchange Act). (See Protest.) If a foreign bill is accepted as to a part only of

the amount, it must be protested as to the balance. (Section 44 (2).)

A foreign bill may be payable at one or more "usances." A usance is the time which, by custom, is allowed between two countries for the currency of a bill. (See USANCE.)

As to the stamp duty upon foreign bills, see BILL OF EXCHANGE.

Under the Uniform Law (*q.v.*) the countries which have signed the Convention undertake that no bill or promissory note drawn within their territories shall be invalidated for non-compliance with revenue laws. Penalties may be imposed, and all remedies on the bill may be suspended till the stamp laws are complied with. (See BILL OF EXCHANGE, DOCUMENTARY BILL, INLAND BILL, IN CASE OF NEED, UNIFORM LAW.)

FOREIGN COMPANY. (See COMPANY OUTSIDE GREAT BRITAIN.)

FOREIGN EXCHANGE. (See CHEQUE RATE EXCHANGE RESTRICTIONS, EXCHANGE CONTROL ACT, FORWARD EXCHANGE, MAIL TRANSFER, MINT PAR OF EXCHANGE, SPECIE POINTS, TELEGRAPHIC TRANSFERS.)

FOREIGN MONEYS. Reference should be made to the current edition of the *Bankers' Almanac*.

FOREIGN SECURITY. (See Section 82 of the Stamp Act, 1891.)

FORFEIT OF SHARES. (See LIEN, SHARE CAPITAL.)

FORGED TRANSFER. Where a banker takes as security a transfer of stock or shares registered in the names of several holders, it is advisable that the transfer should be signed at the bank by each holder, because if one of the holders forges the signature of another holder to the transfer, the banker, even after registration and ultimate sale of the stock, may be compelled to make good the value of the stock to the true owner. This point was decided in the important case of *Sheffield Corporation* v. *Barclay and Others*, [1905] A.C. 392. The House of Lords (1905) reversed the decision of the Court of Appeal (1903) and restored that of the Lord Chief Justice (1902), where judgment for the plaintiffs was given for the amount claimed.

The Lord Chancellor (the Earl of Halsbury) said: "Two persons, Timbrell and Honnywill, were joint owners of corporation stock created under a local Act of Parliament. Timbrell, in fraud of Honnywill, forged a transfer of the stock, and borrowed money on the security of the stock which the transfer was supposed to have transferred. A bank which lent the money sent the transfer to the proper officer of the corporation, and demanded, as they were entitled to do, if the transfer was a genuine one, that they should be registered as holders of the stock. The corporation acted upon their demand; they transferred the stock into the names of the bank, and the bank in ordinary course transferred it to holders for value. The corporation also, in ordinary course, issued certificates, and the holders of these certificates were able to establish their title against the corporation, who were estopped from denying that those whom they had registered were the stockholders entitled. Honnywill, after the death of Timbrell, discovered the forgery that had been committed, and compelled the corporation to restore the stock, and the question in the case is whether the corporation has any remedy against the bank who caused them to act upon a forged transfer, and so render themselves liable to the considerable loss which they have sustained. Now, apart from any decision upon the question (it being taken for granted that all the parties were honest), I should have thought that the bank were clearly liable. They have a private bargain with a customer. Upon his assurance they take a document from him as a security for a loan, which they assume to be genuine. I do not suggest there was any negligence—perhaps business could not go on if people were suspecting forgery in every transaction—but their position was obviously very different from that of the corporation. The corporation is simply ministerial in registering a valid transfer and issuing fresh certificates. They cannot refuse to register, and though for their own sake they will not and ought not to register or to issue certificates to a person who is not really the holder of the stock, yet they have no machinery, and they cannot inquire into the transaction out of which the transfer arises. The bank, on the other hand, is at liberty to lend their money or not. They can make any amount of inquiries they like. If they find that an intended borrower has a co-trustee, they may ask him or the co-trustee himself whether the co-trustee is a party to the loan, and a simple question to the co-trustee would have prevented the fraud. They take the risk of the transaction and lend the money. The security given happens to be in a form that requires registration to make it available, and the bank 'demand,' as, if genuine transfers are bought, they are entitled to do, that

the stock shall be registered in their name or that of their nominees, and are also entitled to have fresh certificates issued to themselves or nominees. This was done, and the corporation by acting on this 'demand' have incurred a considerable loss. As I have said, I think if it were *res integra* I should think the bank were liable; but I do not think it is *res integra*, but is covered by authority. In *Dugdale* v. *Lovering* (1875), 10 C.P. 196, Mr. Cave, arguing for the plaintiff, put the proposition thus: 'It is a general principle of law when an act is done by one person at the request of another, which act is not in itself manifestly tortious to the knowledge of the person doing it, and such act turns out to be injurious to the rights of a third party, the person doing it is entitled to an indemnity from him who requested that it should be done.' . . . I think both upon principle and authority the corporation are entitled to recover. . . ."

The Forged Transfers Acts, 1891 and 1892, were passed with the object of enabling purchasers of stock to be protected from losses through forged transfers. Companies, however, are not obliged to adopt them, and those which adopted them were chiefly railway companies. Section 1 of the 1891 Act is as follows—

"1. (1) Where a company or local authority issue or have issued shares, stock, or securities transferable by any instrument in writing or by an entry in any books or register kept by or on behalf of the company or local authority, they shall have power to make compensation by a cash payment out of their funds for any loss arising from a transfer of any such shares, stock, or securities, in pursuance of a forged transfer or of a transfer under a forged power of attorney whether such loss arises, and whether the transfer or power of attorney was forged before or after the passing of this Act, and whether the person receiving such compensation, or any person through whom he claims, has or has not paid any fee or otherwise contributed to any fund out of which the compensation is paid." (The words "whether such loss, etc," were added by the 1892 Act.)

"(2) Any company or local authority may, if they think fit, provide, either by fees not exceeding the rate of one shilling on every one hundred pounds transferred, with a minimum charge equal to that for twenty-five pounds, to be paid by the transferee upon the entry of the transfer in the books of the company or local authority, or by insurance, reservation of capital, accumulation of income, or in any other manner which they may resolve upon, a fund to meet claims for such compensation." (The words "with a minimum charge equal to that for £25" were added by the 1892 Act.)

"(3) For the purpose of providing such compensation any company may borrow on the security of their property, and any local authority may borrow with the like consent and on the like security and subject to the like conditions as to repayment by means of instalments or the provision of a sinking fund and otherwise as in the case of the securities in respect of which compensation is to be provided, but any money so borrowed by a local authority shall be repaid within a term not longer than five years. Any expenses incurred by a local authority in making compensation, or in the repayment of, or the payment of interest on, or otherwise in connection with, any loan raised as aforesaid, shall, except so far as they may be met by such fees as aforesaid, be paid out of the fund or rate on which the security in respect of which compensation is to be made is charged.

"(4) Any such company or local authority may impose such reasonable restrictions on the transfer of their shares, stock, or securities, or with respect to powers of attorney for the transfer thereof, as they may consider requisite for guarding against losses arising from forgery.

"(5) Where a company or local authority compensate a person under this Act for any loss arising from forgery, the company or local authority shall, without prejudice to any other rights or remedies, have the same rights and remedies against the person liable for the loss as the person compensated would have had."

Some companies, instead of adopting the Forged Transfers Acts, protect themselves against liability arising from forgery by a policy of insurance. (See COMPANIES, TRANSFER OF SHARES.)

FORGERY. Forgery has been defined as the making or alteration of any document with the intention of prejudicing another person.

Where the numbers on certain Bank of England notes had been altered, the intention being to prevent the notes (payment of which had been stopped) being traced, it was held in the case of *Suffell* v. *Bank of England* (1882), 9 Q.B.D. 555, that the plaintiff, who was an innocent holder for value, could not recover from the Bank of England because the notes had been altered in a material part. The importance of the numbers on notes was pointed out by Jessel, M.R., in the course of his judgment. (See BANK OF ENGLAND NOTES.)

If a banker, unknowingly, gives forged bank notes in payment of a cheque, they do not operate as a payment.

A transferor by delivery warrants to his immediate transferee, being a holder for value, that the note is what it purports to be, and therefore the person who receives a forged bank note can reclaim the money from the person who gave him the note, provided he makes the claim within a reasonable time.

It is not a statutory forgery if a genuine signature is affixed by a person who indicates on the face of the document that he signs "per pro." on behalf of another, notwithstanding that the authority so to sign has been misused and fraudulently used. The signature to a cheque cannot be a valid signature in the hands of one person and a forgery in the hands of another; it cannot be valid to-day and a forgery to-morrow. (The Lord Chief Justice in *Morison* v. *London County and Westminster Bank, Ltd.*, [1914] 3 K.B. 356.)

The Bills of Exchange Act, 1882, Section 24, enacts as follows—

"Subject to the provisions of this Act, where a signature on a bill is forged or placed thereon without the authority of the person whose signature it purports to be, the forged or unauthorised signature is wholly inoperative, and no right to retain the bill or to give a discharge therefor or to enforce payment thereof against any party thereto can be acquired through or under that signature, unless the party against whom it is sought to retain or enforce payment of the bill is precluded from setting up the forgery or want of authority.

"Provided that nothing in this Section shall affect the ratification of an unauthorised signature not amounting to a forgery."

The words "through or under that signature" in the Section just quoted require particular attention. An innocent possessor for value cannot retain a bill, or give a discharge for it or sue upon it, where a signature on the bill is forged. The forged signature which is referred to is the signature which is necessary to transfer the bill to the holder, that is, the one through or under which he gets his title. If an indorsement which is necessary to pass the title of the bill is forged, the bill is valueless to the party acquiring it through that signature. But where an indorsement, which is not necessary for the transfer of the title, is forged, that forged indorsement may be ignored and the holder in due course can sue all the other parties to the bill. For example, where a bill is specially indorsed, say, to John Brown, the real signature of John Brown is required in order to make the bill valid and to pass the title to a succeeding holder. If John Brown's signature is forged, a subsequent holder gets no title. If John Brown's signature is genuine and the indorsement is in blank (the bill then passing by simple delivery), it does not matter to a subsequent holder whether a signature following that of John Brown is a genuine one or not, as that subsequent holder derives his title through John Brown and not through the person from whom he received the bill.

If a holder obtains payment of a bill which is affected with a forged signature he cannot retain the money. The rightful owner of the bill can demand to have the bill given up to him and can sue the acceptor thereon. The acceptor will have a right of action against the holder for the return of the money he paid to him. The holder will look to the person from whom he obtained the bill for repayment, and that person will then look to his transferor, but the person who actually took the bill through the forged indorsement will have no one to proceed against on the bill though he will, have a personal remedy against the forger if he can be found. If the holder, in such a case as that referred to, to whom the acceptor paid the forged bill, cannot be found, the acceptor will lose the money, as he is liable to the true owner.

If a banker pays a bill bearing a forged

acceptance or a forged indorsement (either of the payee or any endorsee) he cannot debit his customer with the amount. A banker ought to know whether his own customer's (the acceptor) signature is genuine, but the banker is not particularly concerned with the genuineness of the drawer's signature, as the acceptor by accepting the bill is precluded (Section 54) from denying to a holder in due course the genuineness of the drawer's signature.

If a banker has paid an acceptance and one of the indorsements is subsequently found to have been forged, the banker cannot hold the acceptor liable for the amount. The banker is liable to the true owner for conversion. (See INDORSEMENT.)

If there is an indorsement subsequent to the forged one the banker may be able to recover from the person to whom he paid the bill if it is not too late for that person to give notice of dishonour to the indorser subsequent to the forgery. That is the effect of the judgment in *Imperial Bank of Canada* v. *Bank of Hamilton*, [1903] A.C. 49. In *London & River Plate Bank* v. *Bank of Liverpool*, [1896] 1 Q.B. 7, a case concerning a bill with forged indorsements, it was held that "if the mistake is discovered at once, it may be that the money can be recovered back; but if it be not, and the money is paid in good faith and is received in good faith, and there is an interval of time in which the position of the holder may be altered, the principle seems to apply that money once paid cannot be recovered back." (See PAYMENT OF BILL.)

When a bill is payable to bearer, either originally or by a genuine indorsement in blank, and the banker has paid it to a holder who has no title, the bill may be charged to the acceptor's account as "it is an authority to pay it to the person who appears to be the holder." (Hart.)

Where a banker on whom a cheque is drawn pays it in good faith and in the ordinary course of business, he is not liable for the indorsement of the payee or any subsequent indorser, even though the indorsement is forged. (Section 60, Bills of Exchange Act, 1882.) But if a banker gives cash for a cheque drawn upon another banker, he is not protected by Section 60, and is liable as any other person. Protection is afforded by Section 80, to a banker on whom a crossed cheque is drawn, if he pays it in accordance with the crossing.

Where a drawer's signature on a cheque is forged, the banker cannot charge his customer's account therewith (except as below), for he has not obeyed his customer's mandate; the question of negligence is immaterial. A forged signature cannot be ratified, for ratification implies agency. An unauthorised signature, however, can be ratified. A forged signature can be adopted, however, provided there is consideration for such adoption. "The supposed signor might say, 'I will recognise this signature as my own; you may debit my account with these cheques.'" (Scrutton, L.J., in *Greenwood* v. *Martins Bank*, [1932] 1 K.B. 371.) A drawer may be estopped from denying the genuineness of the signature where his conduct has been so negligent as to lead the bank into paying the cheque. For example, if the drawer was aware that forged cheques were in circulation and did not advise the banker, his silence might be regarded as the proximate cause of the payment and estop him from denying that the signatures were his own.

A banker must give notice of a drawer's forged signature on the day he receives such a cheque. (See SIGNATURE.)

A banker collecting a crossed cheque for a customer is protected by Section 82 of the above Act. If collected for a stranger he is liable to the true owner for conversion. A banker who collects an uncrossed cheque for a customer or a stranger is liable to the true owner. If he cashes, or credits as cash, an uncrossed cheque, he becomes a holder for value with the rights of a holder in due course against all prior parties, but if there is a forged indorsement he is liable to the true owner and has rights of recourse only against any indorser there may be subsequent to the forged indorsement. If he cashes a "not negotiable" cheque, he is liable to the true owner. (See COLLECTING BANKER.)

Where a crossed cheque with a printed form of receipt thereon is payable only when that receipt is duly signed, and the signature on the receipt is forged, the order to pay not being unconditional and the document therefore not a cheque, as recognised by the Bills of Exchange Act, the banker collecting the money for a customer is not protected by that Act; but protection is given by the Revenue Act, 1883. (See RECEIPT ON CHEQUE.)

As to fraudulent alterations in amounts of bills and cheques, see the cases under ALTERATIONS. The effect of the cases is that where a cheque, on which the amount has been fraudulently increased, has been paid, the loss falls upon the drawer if he

drew the cheque negligently so as to facilitate the fraud; but if he was not negligent and exercised reasonable care in drawing the cheque, the loss falls upon the banker who paid the cheque.

A banker is protected in paying one of his own drafts bearing a forged indorsement by Section 1 of the Bills of Exchange Act (1882) Amendment Act, 1932 (*q.v.*), as regards crossed drafts, and by Section 19 of the Stamp Act, 1853, as regards open drafts. (See BANKER'S DRAFT.)

Making a false entry in a pass book with intent to defraud is recognised by law as a forgery of an accountable receipt.

If a transfer of stock is made by the Bank of England under a forged power of attorney, the Bank is liable to replace the stock, unless it can be proved that there was such negligence on the part of the stockholder as to prevent him from disputing the transfer. (See FORGED TRANSFER.)

The late J. W. Gilbart records that the first instance of the forgery of a bank note occurred in 1758. To minimise the risks of forgery, bank notes are made with the best materials and the engraving and printing are done by highly skilled workmen and with costly plant. Some notes are printed in colours to make imitations more difficult. The Bank of England relies principally upon the quality of the paper used for its notes, and the water-mark in the paper. It is recorded that in certain imitations of Bank of England notes the paper and printing were so good as to deceive all but experts, who noted that the water-mark had not been stamped into the paper with the requisite degree of force.

By the Forgery Act, 1913 (3 & 4 Geo. V, cap. 27), a document is false if the whole or any material part thereof purports to be made by a person who did not make it nor authorise its making; or if, though made by the person by whom it purports to have been made, the time or place of making, where either is material, or, in the case of a document identified by number or mark, the number or mark, is falsely stated therein. In particular a document is false (*a*) if any material alteration has been made therein; (*b*) if the whole or some material part of it purports to be made by or on behalf of a fictitious or deceased person; (*c*) if, though made by an existing person it is made with the intention that it should pass as having been made by some other person. For the purposes of the Act, the crossing on any cheque, draft on a banker, post-office money order, postal order, coupon, or other document the crossing of which is authorised by law, shall be a material part of such documents. (Section 1.)

Forgery of the following documents, if committed with intent to defraud, shall be felony and punishable with penal servitude for life: (*a*) any will, probate or letters of administration; (*b*) any deed or bond, or any attestation of the execution of any deed or bond; (*c*) any bank note, or any indorsement on or assignment of any bank note. Forgery of the following documents, if committed with intent to defraud, shall be punishable with penal servitude for any term not exceeding fourteen years: (*a*) any valuable security or assignment thereof or indorsement thereon, or, where the valuable security is a bill of exchange, any acceptance thereof; (*b*) any document of title to lands, or assignment thereof, or indorsement thereon; (*c*) any document of title to goods, or assignment thereof, or indorsement thereon; (*d*) any power of attorney or other authority to transfer any share or interest in any stock, etc.; (*e*) any entry in any share register. (Section 2.) Every person who utters any forged document, knowing it to be forged, shall be liable to the same punishment as if he had himself forged it. (Section 6.)

Every person shall be guilty of felony who, without lawful authority or excuse, the proof whereof shall lie on the accused, has in his custody or possession a forged bank note, knowing it to be forged (Section 8); or special paper such as is used for making bank notes. (Section 9.) "Valuable Security" in Section 2 includes any certificate, deposit receipt, scrip, debenture, bill, note, warrant, or other security for the payment of money, etc. (Section 18.)

Any person who knowingly and wilfully aids or abets the commission of an offence punishable under this Act shall be liable to be dealt with and punished as a principal offender. (Section 11.)

FORWARD EXCHANGE. Foreign currency bought or sold for future delivery is known as forward exchange and its price, called the forward rate, is expressed as being at a premium (or discount) to the rate for telegraphic transfers (T.T.). For example: On the 13th October, 1937, the rate for francs to be delivered one month ahead was quoted at ½ fc. discount, thereby implying that if the Paris/London T.T. rate was 147 sellers and 147·50 buyers, the one month forward selling and buying rates would be 147·50 and 148 respectively.

The facilities offered by the existence of a forward market are of particular use to importers and exporters who may have to receive or deliver foreign currencies at some future date and who wish to make sure of the sterling equivalent that they will then receive or have to pay. Thus, an English exporter (with sterling costs) who has invoiced goods to a French buyer for fcs. 50,000, payment to be made in three months' time, will desire to know at the time of shipment the amount of pounds that he will be likely to obtain for the francs, since any depreciation in the value of the franc may wipe out his profit. By selling the expected francs forward to his banker he can make sure of avoiding a loss, always provided his debtor makes payment at maturity.

Similarly an English importer who has undertaken to pay francs at a future date may buy them forward to fit in with the day of payment.

Forward rates are quoted for one month, two months, and three months, transactions for intermediate periods being calculated therefrom.

It sometimes happens that the customer may be unable to fix a definite date for delivery. In such cases the currency can be bought or sold forward "option" such and such a date. (Option February, March; option end November, etc.) This means that the customer can perform his part of the contract any time within the arranged period, while the banker fixes to the transaction that rate which will be most favourable to himself. Example—

On 10th October, 1937,

Bankers T.T. selling rate French fcs. 150/£.

1 month ½ fc. discount.

2 months 2 fcs. discount.

3 months 5 fcs. discount.

A customer buying francs forward three months' option would be quoted a rate of 150, since under the contract he may call on the banker to hand over francs almost at once.

If the above rates were bank's buying rates, a customer selling francs three months' option would be quoted a rate of 155, because at this rate the banker gets most francs for a given expenditure of sterling.

The question of whether a forward quotation shall stand at a premium or a discount is in normal times decided by the comparative level of interest rates in the two centres involved. This arises from the fact that a banker who does a forward deal with a customer immediately covers himself by doing a "spot" (T.T.) deal in the opposite sense. Thus, a London banker selling Paris francs forward will at once buy them spot. He will then be "out" of the sterling and be possessor of francs. If the London interest rate is higher than that ruling in Paris he will be subjected to a loss unless he so adjusts the forward rate as to compensate himself. In the case suggested, if he can earn 2½ per cent on his sterling and only 1½ per cent on his francs, he will sell fewer francs forward for a pound than he would spot—so the forward franc will stand at a premium.

Operations consisting of a simultaneous sale or purchase of spot currency accompanied by a purchase or sale, respectively, of the forward are known as "swaps," because the spot is "swapped" against the forward. By these means short-term investors try to take advantage of differences in interest rates in two different centres (say London and New York) while at the same time safeguarding themselves against exchange rate fluctuations. The currency which is bought spot is left on deposit in the higher interest centre or else is invested in bills.

In abnormal periods, the premium or discount margin shown in the forward rates is due not so much to differential interest rates as to speculative movements reflecting the market's anticipations of the future movements of a given currency. Thus, in September, 1936, just before France, Holland, and the rest of the "gold bloc" abandoned the gold standard, the heavy discount on the forward franc and the forward guilder demonstrated that prospective holders of these currencies were selling their claims forward as they expected to get much less if they waited.

When a currency is being subjected to considerable speculative pressure, as was the pound in September, 1931, the Government may limit, or even forbid, dealings in the forward market. There can be no true forward market in currencies subjected to a definite scheme of exchange restrictions, but forward deals may nevertheless be concluded, provided the monetary authorities are able and willing to make the necessary arrangements. At present, for example, a British trader can, subject to the Bank of England's permission, enter into certain limited forward contracts in "specified currencies" up to six months.

FORWARD PRICE. The "forward" price of silver is the quotation for delivery and payment at a future date. The "spot" or "cash" price is for immediate delivery and payment.

FOUNDERS' SHARES. So called because created for the purpose of remunerating the founders or promoters of a company. A vendor sometimes obtains founders' shares as part of the purchase money, and, occasionally, a founders' share is offered to subscribers for a certain number of ordinary shares. Although the nominal amount of a founders' share is small, in a successful company the value may be very considerable. If founders' shares receive, say, a half of the net profits after a certain fixed dividend has been paid on the ordinary shares, it follows, when the surplus profits are large, that the founders' shares, which are few in number, will obtain a large share of the profits. These surplus profits would, in a company which has no founders' shares, be no doubt partly used to build up a reserve fund or to strengthen the company's position in some other way.

They are not considered a satisfactory kind of security. Owing to the large part of the profits which they absorb, there is the danger, in certain cases, of the ordinary shareholders making efforts to have the company reconstructed.

Every prospectus issued by a company must state, amongst other things, the number of founders' or management or deferred shares, and the nature and extent of the interest of the holders in the property and profits of the company. (See Section 38 of the Companies Act, 1948, under PROSPECTUS.) (See COMPANIES.)

FOUR PENCE. (See GROAT.)

FOUR SHILLING PIECES. (See DOUBLE FLORINS.)

FRACTIONAL CERTIFICATE. A certificate for a fraction of a share. For example, in connection with the amalgamation of two banks there may be an exchange of shares on the basis of, say, three shares of the old bank for four shares of the new, and a shareholder with, say, five shares would receive in exchange six new shares and a fractional certificate for two-thirds of one share. He could then either sell the two-thirds, or purchase another one-third so as to make one whole share.

A fractional certificate is also the name of a document sometimes issued by a company for the amount of interest which is not paid in cash when due. The certificate may provide that the interest will be paid within a certain period and that, in the meantime, interest will be paid on the amount of the unpaid interest mentioned in the certificate. A document of this nature is sometimes called a deferred interest certificate or warrant. (See the case under DEFERRED INTEREST CERTIFICATE.)

FRANCO. A request to "deliver documents franco" means to deliver them free of value.

FRAUDULENT ALTERATIONS. (See ALTERATIONS.)

FRAUDULENT CONVEYANCE. One of the eight acts of bankruptcy. A conveyance, gift, delivery, or transfer of a debtor's property with the intention of defeating or delaying his creditors. A fraudulent conveyance is not necessarily a dishonest transaction, but one that defeats or delays a man's creditors; it does not necessarily imply a dishonest motive or a state of insolvency. Where a builder converted his business into a limited company which took over his assets and liabilities, without notifying his creditors, a receiving order was made on the petition of one of them, the act of bankruptcy relied on being a fraudulent conveyance in that the transfer of the debtor's assets to the company within the previous three months had defeated or delayed his creditors. The floating charge over such assets given by the new company was consequently set aside, as the trustee's title related back to such transfer. (*In re Sims, ex parte A. E. Quaife* v. *W. Sims and Lloyds Bank, Ltd.*, [1930] W.N. 6.) (See ACT OF BANKRUPTCY.)

FRAUDULENT PREFERENCE. The Bankruptcy Act, 1914, Section 1, (1), includes as an act of bankruptcy any conveyance or transfer of a debtor's property or any charge thereon, which would be void under the Act as a fraudulent preference if he were adjudged bankrupt. (See ACT OF BANKRUPTCY.)

Section 44 of the Act says—

> "(1) Every conveyance or transfer of property, or charge thereon made, every payment made, every obligation incurred, and every judicial proceeding taken or suffered by any person unable to pay his debts as they become due from his own money in favour of any creditor, or any person in trust for any creditor, with a view of giving such creditor or any surety or guarantor for the debt due to such creditor, a preference over the other creditors, shall,

if the person making, taking, paying, or suffering the same is adjudged bankrupt on a bankruptcy petition presented within three (now six) months after the date of making, taking, paying, or suffering the same, be deemed fraudulent and void as against the trustee in the bankruptcy.

"(2) This Section shall not affect the rights of any person making title in good faith and for valuable consideration through or under a creditor of the bankrupt."

A preference to be fraudulent must be voluntary and not under duress and the debtor making it must be insolvent.

The burden of proving a fraudulent preference lies upon the trustee in bankruptcy and he must show that the dominant motive of the debtor was to prefer a particular creditor; inference is not necessarily sufficient. "The onus is on those who claim to avoid the transaction to establish what the debtor really intended, and that the real intention was to prefer. The onus is only discharged when the Court upon a review of all the circumstances is satisfied that the dominant intent to prefer was present; that may be a matter of direct evidence or of inference, but where there is not direct evidence and there is room for more than one explanation it is not enough to say there being no direct evidence the intent to prefer must be inferred." (Lord Tomlin in *Peat* v. *Gresham Trust*, [1934] A.C. 252.)

Where a trader had an overdraft guaranteed by his father, and ceased to pay his creditors, but collected moneys owing to him and paid them into his account, thereby reducing his father's guarantee liability by some £698, it was held that there was no fraudulent preference, as the debtor operated his account in exactly the same way as before. "To say that the only inference possible from his conduct was that he intended to prefer his father ignored the essential nature of a fraudulent preference laid down by Lord Tomlin in *Peat* v. *Gresham Trust*." (*In re Lyons. The Times*, 13th October, 1934.)

Sections 92 (4) and 115 (4) of the Companies Act, 1947, protect bankers where fraudulent preference of a guarantor is alleged, by empowering the Court to grant relief and to give leave to bring in the guarantor as a third party in the action. These sections cover bankruptcy; winding up is similarly covered in Section 32 (3) of the Companies Act, 1948.

By the Companies Act, 1948, Section 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.'"

FREE MARKET. On the Stock Exchange a "free market" for any particular shares means that they may be readily bought or sold. (See LIMITED MARKET.)

FREEBENCH. Abolished after 1925. A widow's interest in the copyhold estate of her deceased husband. Williams, in *Real Property*, says: "A special custom is required to entitle the wife to any interest in the lands of her husband after his decease. Where such custom exists the wife's interest is termed her freebench, and it generally consists of a life interest in one divided third part of the lands, or sometimes of a life interest in the entirety." It corresponded, therefore, in many respects to dower, the life estate of a widow in the third part of the freehold lands of her deceased intestate husband. (See DOWER.)

FREEHOLD. A legal interest in land in the shape of an estate in fee simple absolute in possession. (Law of Property Act, 1925, Section 1.) It is the highest interest a person can have in land, and the term dates back to feudal times when land was granted by a tenant in chief to A and his heirs in return for certain fixed services, such as supplying a number of soldiers or tilling a number of acres. Such services were *free* services as contrasted with the menial services of villeins who held their land under copyhold tenure. These free services were in time commuted for money payments which in time, for the most part, lapsed, although some rent charges still subsist. A freehold interest can exist subject to a chief rent or fee farm rent (*q.v.*).

An owner of a freehold estate in land can grant a legal estate in the shape of a term of years absolute, i.e. a leasehold. This is the only other legal estate in land. (Law of Property Act, 1925, Section 1.)

A freehold interest in land is *real* property, because formerly if a freeholder was ejected from his land, he could bring an action to recover the "thing" (*res*) of which he had been deprived; a leaseholder, however, only had a right of action for damages against the person who had dispossessed him. (See CONVEYANCE, LEASEHOLD, LEGAL ESTATES, PERSONAL REPRESENTATIVE, TITLE DEEDS.)

FREIGHT. The charge made for the carriage of goods in a ship. The cargo itself is often called the freight. When the word is used, it is therefore necessary to note whether it refers to the carriage or to the cargo.

A shipowner has usually a lien upon the cargo until the amount due for freight is paid.

FRIENDLY SOCIETY. An unincorporated society formed for the benefit of its members, during illness, in old age, and for assisting widows of members and orphans, and for other purposes.

A friendly society which conforms to certain requirements may be registered with the Registrar of Friendly Societies, under the Friendly Societies Act, 1896, an Act which consolidated the Acts relating to such societies.

An unregistered society does not partake in the privileges which are secured by registration.

A registered society has power under that Act to mortgage its property, if the rules of the Society so provide; and a mortgagee shall not be bound to inquire as to the authority for any mortgage by the trustees. (Section 47.)

In dealing with a Friendly Society, a banker should make himself conversant with its rules relating to the borrowing of money and mortgaging property, and also as to the manner in which cheques may be drawn. A copy of the resolution with respect to the opening of the account, and specimens of the signatures of the persons authorised to sign, should be supplied to the banker. The account should be opened in the name of the Society.

A receipt executed in the manner required by the statute relating to the Society, and stating the name of the person who pays the money indorsed upon a mortgage deed, has the effect of a reconveyance. (Law of Property Act, 1925, Section 115.) These provisions are in substitution for the previous statutory provisions relating to the Society's receipts, but not so as to render the Society liable for stamp duty on the receipts.

By the Friendly Societies Act, 1896, Section 33—

"Stamp duty shall not be chargeable upon any of the following documents—

"(*a*) Draft or order or receipt given by or to a registered society in respect of money payable by virtue of its rules or of this Act;

"(*b*) Letter or power of attorney granted by any person as trustee for the transfer of any money of a registered society or branch invested in his name in the public funds;

"(*c*) Bond given to or on account of a registered society or branch, or by the treasurer or other officer thereof;

"(*d*) Policy of insurance or appointment or revocation of appointment of agent, or other document required or authorised by this Act, or by the rules of a registered society or branch."

By a circular dated 10th November, 1894, the Board of Inland Revenue intimated "that they have agreed to regard cheques drawn by, or on behalf of, a duly registered Friendly Society upon its banker as falling within the exemption from stamp duty granted by Section 15 of the Act 38 & 39 Vict. c. 60. In future, therefore, all such cheques may be paid by you, although unstamped."

FUNDED DEBT. "Funded Debt strictly includes nothing but perpetual annuities, that is, stock the principal of which the Government need not repay until it wishes." (Hilton Young, *The System of National Finance.*)

Old Consols which are irredeemable is the best example of the Funded Debt. When an unfunded debt with a maturity date is changed into a permanent debt it is known as "funding the unfunded debt." (See FLOATING DEBT, UNFUNDED DEBT.)

FUNDING DEBENTURE INTEREST. When a company is unable to pay its debenture interest in cash, the debenture holders sometimes agree to accept it in debentures, thus increasing the debenture indebtedness on which interest is payable.

FUNDING LOAN, 4%, 1960–90. Issued by the Government in 1919, at £80 per cent, in stock and bonds to bearer. The stock may be inscribed or registered as transferable by deed. Stock and bonds of various issues were accepted at par as the equivalent of cash in payment. The loan will be repaid at par on 1st May, 1990, and may be redeemed at par at any time on or after 1st May, 1960.

The stock and bonds may be used in payment of death duties on the basis of £80 cash for each £100 surrendered, provided that they have been held for not less than six months preceding the date of death. The stock forms a trustee investment and trustees may invest therein, notwithstanding that the price may at the time of investment exceed the redemption value of £100 per cent. (See SINKING FUND.)

FUNDING THE UNFUNDED DEBT. (See FUNDED DEBT.)

FUNDS. Consols and other Government securities are referred to as the Funds.

FUTURES. In the produce markets the term "futures" implies contracts for purchases or sales of commodities for future receipt or delivery at a price fixed in the present.

For example, before the war of 1939, in the cotton trade when a merchant bought a quantity of cotton abroad he based the purchase price on the price that he expected to receive when he came to sell the cotton in this country. If, before that date arrived, a considerable fall took place in the price, the merchant might suffer serious loss. To protect or insure himself against such a risk, the merchant sold "futures" to balance his purchases. Bankers who financed large quantities of cotton insisted upon these "hedges," as they are called, being effected. Under this system of hedging, the importer paid into the Cotton Clearing House weekly the difference between the market price, if it was rising, of the "futures" he had sold and the previous week's price. His loss on the "future" sale, however, was gained in the value of his cotton. If, on the other hand, the market price had declined since the previous week, the importer received the amount of the fall from the Clearing House, which sum he paid to the banker who was financing the cotton, because the value of his cotton had declined to the same extent. When the importer had to pay the Clearing House, the banker found the money, because the cotton had risen in value to the same extent.

Whilst an importer sold "futures" to hedge his purchases against a fall in price, a manufacturer might buy "futures" to hedge the deliveries he had undertaken, against a rise in the value of cotton.

With regard to forward purchases and sales of exchange, see FORWARD EXCHANGE.

GARBLING. Where light gold coins and coins of full legal weight are in circulation together, the good coins are collected by goldsmiths and others and exported to be sold by weight, or are melted down to be used in the manufacture of jewellery. This action of picking out the good and leaving the light coins is termed garbling the coinage. (See GRESHAM'S LAW.)

GARNISHEE ORDER. (French, *garnir*, to warn.) The object of a garnishee order is the attachment by a judgment creditor of moneys of the judgment debtor in the hands of a third party—the garnishee. Bankers, as the depositees of other people's money, are perhaps the most usual recipients of garnishee orders.

An application with affidavit is made under Order 14 of the Rules of the Supreme Court by the judgment creditor's solicitor and an order *nisi* is thereupon made which, when served on the garnishee, restrains him from parting with any moneys due or accruing due to the judgment debtor and orders his appearance in Court on a given date (usually eight or more days later) to show cause, if he can, why such moneys shall not be taken in satisfaction of the debt due to the judgment creditor.

A copy of the order is served by the creditor's solicitor on the head office of the bank concerned and usually on the branch as well. The original order should be exhibited and the copy should be compared with it. Where only served on the head office, time is allowed for advice to be sent to the branch concerned. It is now the practice to specify the name of the branch on all orders served on a head office. Any ambiguity in the description of the judgment debtor must be cleared up before attaching the account, and cheques paid between the service of the order and the clearing up of such ambiguity are in order. (*Koch* v. *Mineral Ore Syndicate* (1910).) Service cannot be avoided, however, merely because the account is in the debtor's known trade name.

On the appointed day the bank's solicitor will appear in Court and also the judgment debtor if he wants to enter a defence. Failing the latter, the Court will issue an Order Absolute, whereupon the garnishee (the bank) will pay over to the judgment creditor the amount of the order and costs (usually about £5), or the available balance if less than the order. Such payment operates as a full discharge by the bank against his customer the judgment debtor.

All moneys due or accruing due are attached and thus all credit balances on current account in the customer's name come under the order, and the accounts should be stopped under advice to the customer, notwithstanding that the amount of the order is small and the balances are large. If circumstances make it expedient, a new account should be opened and an overdraft permitted if necessary. The attached balance should not be disturbed for there is the risk of service of a second garnishee order, or a receiving order may be made before the order is made absolute, or there may be trust funds in the account, in which case the Court may rule that the customer's moneys were drawn out first. If the circumstances demand that cheques presented after service of the order should be returned, they should bear the answer "Refer to Drawer." Moneys paid in after the service of the order are not attached.

For some time past a practice has been observed whereby limited orders are issued for the amount of the judgment debt and costs, plus a round sum of £5 for possible garnishee costs. In such cases it is customary to transfer such sum to a suspense account to await the hearing and to permit the current account to be carried on.

Where an order is served and cheques have been received through the clearing earlier in the day it is the practice to pay them.

Where the credit balance includes uncleared effects it is submitted that the amount of such items is not attached unless there is an agreement to allow drawings before clearance. The decision otherwise, in *Jones* v. *Coventry*, [1909] 2 K.B. 1041, would appear to be overruled by the ruling in *Underwood* v. *Barclays*, [1924] 1 K.B. 775.

Where a cheque has been marked for payment, a banker is entitled to reserve the amount of it from any attachable balance. Where payment of a cheque has been promised by wire without any usual reservation, the banker could not deduct the amount thereof from any attachable balance. Where the account is overdrawn, it is usual to inform the judgment creditor's solicitors forthwith, who will arrange for the order to be withdrawn without waiting for the hearing in Court.

All accounts in the customer's name must be taken into account and a debit balance may be set off against a credit balance before arriving at the attachable sum.

Where there is a loan payable on demand,

any credit balance on a current account could presumably be set off and thus escape the operation of an order, but in practice the question would be put to the Master in Chambers. Where forms of charge give a lien on any credit balances and it is desired to exclude the operation of an order, the matter should likewise be mentioned to the Master.

Trust moneys are not attachable but cause must be shown to the Master in Chambers. Under Rule 5 of Order 45, where a garnishee suggests that the funds in question belong to a person other than the judgment debtor, the Court may order the appearance of such party.

A solicitor's client account is attached by a garnishee order. In *Plunkett and Another* v. *Barclays Bank* (1936), it was held that a balance on the client account was money due by the bank to the solicitor and the bank could not be expected to adjudicate on conflicting equities.

A garnishee order citing a sole judgment debtor does not operate on a joint account in which such debtor is a party. But an order citing joint debtors will attach moneys standing to the credit of one of them.

A garnishee order will not attach balances held abroad. (*Richardson* v. *Richardson and National Bank of India* (1927), 43 T.L.R. 631.)

Salaries of Crown servants are not attachable, not being due from the Crown as a debt. (*Lucas* v. *Lucas and High Commissioner for India*, [1943] 2 All E.R. 110.)

Moneys held by a bank in the name of the liquidator of a company cannot be attached on account of a debt due by the company in liquidation. (*Lancaster Motor Co. (London), Ltd.* v. *Bremith, Ltd.*, [1941] 2 All E.R. 11.)

In *Harrods Ltd.* v. *Tester*, [1937] 2 All E.R. 236, where a married woman's account was the subject of a garnishee order, the husband brought evidence that all the moneys in the account were his and it was held that there was a resulting trust in favour of him and the account was not attached.

A banker is not entitled to deduct interest and commission charges accruing from any attachable balance.

Where a garnishee order *nisi* has been served and, before it is made absolute, notice of an act of bankruptcy or presentation of a petition is received, or if a receiving order has been made, the garnishee order fails. (See Bankruptcy Act, 1914, Section 40.)

Where a company is being wound up b the Court, any attachment after the commencement of the winding up is void. (Companies Act, 1948, Section 228.)

Likewise, where an order *nisi* is outstanding on a company's account and a petition for winding up is presented, the order will fail. (Companies Act, 1948, Section 325 (1).) Where a company was being wound up voluntarily and a judgment creditor attached the banking account standing in the name of the liquidator, it was held that the mere fact that the company's account stood in the name of the liquidator made no difference to the judgment creditor's rights, and that Section 228, of the Companies Act, 1948, only applied to a winding up by the Court. (*Gerard* v. *Worth of Paris, Ltd.*, [1936] 2 All E.R. 905.)

DEPOSIT ACCOUNTS. An order attaches sums due or accruing due and hence a call deposit is attached, so is a fixed deposit (i.e. one payable at a fixed future date) for it is accruing due.

A time deposit is not attachable unless the stipulated notice has been given. Where a judgment debtor had a deposit account at fourteen days' notice but the bank had allowed withdrawals without notice, it was held that a garnishee summons did not attach the deposit, for waiver of notice by the bank did not make the deposit balance a sum due or accruing due. (*Alfred Powell & Sons, Ltd.* v. *Heap*: *Barclays Bank, Ltd., Garnishees*, Stourbridge County Court—reported in *Solicitors' Journal*, 8th August, 1931.)

Where repayment of a deposit is conditional on production of the pass book, the deposit is not attachable unless the book is in the bank's hands.

GARNISHEE SUMMONS. A garnishee summons is issued by a County Court, is served by an officer of the Court, and is returnable at the County Court.

The operation is the same as a garnishee order except that a summons may be settled as far as the bank is concerned by paying to the County Court Registrar, five days before the date of hearing of the summons, the amount due thereunder or the amount of the balance if less than this. The Registrar's receipt will be a good discharge against the customer.

A specimen of an unlimited garnishee order *nisi* is given on page 299.

GAVELKIND. Abolished after 1925. (From A.-S. *Gafol*, tribute.) An old custom surviving in the County of Kent, and also

Garnishee Order (attaching Debt).
No.
In the High Court of Justice,
King's Bench Division.
District Registry.
Between
Judgment Creditor.
Judgment Debtor.
Garnishee.

Upon hearing Mr.
as Solicitor for the above-named Judgment Creditor, and upon reading the affidavit of the said
filed the day of , 19 .

It is ordered that all debts owing or accruing due from the above-named Garnishee to the above-named Judgment Debtor be attached to answer a judgment recovered against the said Judgment Debtor by the above-named Judgment Creditor in the High Court of Justice, on the day of 19 , for the sum of £ , debt and costs on which Judgment the said sum of £ remains due and unpaid.

And it is further ordered that the said Garnishee attend the District Registrar in chambers, at the County Court offices, on day, the day of 19 , at o'clock in the noon, on an application by the said Judgment Creditor that the said Garnishee pay the debt due from to the said Judgment Debtor or so much thereof as may be sufficient to satisfy the Judgment.

Dated this day of 19 .

District Registrar.

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in Kentish Town, North London, by which the real property of a person dying without a will descended, not to the eldest son, but to all the sons together as coparceners, just as it descended equally to the daughters if there were no sons; that is, a form of holding midway between tenants in common and joint tenants. (See COPARCENERS.) An interest in gavelkind, on the death of one of the sons, passed to his heir, or to his devisee if he left a will.

(See INTESTACY.)

GAZETTED. That is, published in the *London Gazette*. The production of a copy of the *London Gazette* containing any notice of a receiving order, or of an order adjudging a debtor bankrupt, shall be conclusive evidence in all legal proceedings of the order having been duly made, and of its date. (Section 137 (2), Bankruptcy Act, 1914.)

See also Partnership Act, 1890, Section 36 (2), under PARTNERSHIPS.

GENERAL ACCEPTANCE. (See ACCEPTANCE—GENERAL.)

GENERAL AVERAGE. A term used in connection with shipping. A clause usually found in a Charter Party is "General average as per York-Antwerp rules." The rules referred to are those which have been adopted at various times by international conferences, York in 1864, Antwerp in 1877, and Liverpool in 1890. Further revisions have taken place, the last being in 1924. Where extraordinary sacrifices have been made, such as throwing cargo overboard or cutting away the masts or other parts of the ship, in order that the vessel and the rest of the cargo may be saved from destruction, the loss does not fall upon the owner of the ship or of the property thrown overboard, but is apportioned among all the parties; that is, the shipowner and the owners of the cargo (or the underwriters, if insured) according to their interest in the ship and cargo. The calculation of the amount payable by each party is usually made by persons called average adjusters. (See BILL OF LADING, CHARTER PARTY, PARTICULAR AVERAGE.)

GENERAL CLEARING. This has taken the place of the Metropolitan and Country Clearings and of part of the Town Clearing, as existed before September, 1939.

On the evacuation of the London Clearing House to Stoke-on-Trent on the outbreak of war in 1939, the three clearings (with the exception of part of the Town Clearing) were merged into one General Clearing, in which were also included articles payable in London drawn on non-clearing banks and Government departments, which were hitherto collected by a "Walks" system. On the return of the Clearing House to London at the close of the war, the General Clearing was continued, except that the pre-war "Walks" system was reinstituted.

GENERAL CROSSING. A cheque is crossed generally which bears across its face—

1. The words "and Company" or any abbreviation thereof between two parallel transverse lines, either with or without the words "not negotiable."

2. Two parallel transverse lines simply, either with or without the words "not negotiable." (See CROSSED CHEQUE.)

GENERAL EQUITABLE CHARGE. An equitable charge not secured by deposit of title deeds and which does not arise under or affect an interest under a settlement or

trust for sale. May be registered under the Land Charges Act, 1925, as a Class C (iii) Land Charge. (See LAND CHARGES, MORTGAGE.)

GENERAL LEDGER (or Impersonal Ledger). However many books may be in use or on whatever system they may be worked, they are all brought together in the general ledger. For instance the daily totals, debit and credit of current accounts, as shown in the day books are posted each day into the general ledger under the heading "current accounts," and the balance is extended weekly or daily, as may be required. When the balances in the current account ledgers are extracted, they should prove with the balance of the "current accounts" account in the general ledger, and if the totals of the debit and credit sides in the current account ledgers are taken out they should agree with the corresponding totals in the general ledger. In proving the ledgers by totals, it is, of course, necessary that the general ledger account, at the commencement of the half-year, should begin with the total of the debit balances and the total of the credit balances, and not merely with the difference of the two sides.

The accounts which are found in a general ledger vary according to the bank, the system and the amount of subdivision which is considered necessary.

GENERAL MEETING. (See MEETINGS.)

GIFT OF A CHEQUE. Where a cheque is handed to another person as a gift, that is, without any consideration, the receiver cannot sue the giver thereon. (See CONSIDERATION FOR BILL OF EXCHANGE.)

GIFTS INTER VIVOS. (Gifts between living persons.) An *inter vivos* gift is a gift that takes effect in the lifetime of the donor. As the gift takes effect at once, it differs from a *donatio mortis causa*, which takes effect only in the event of the donor dying from the illness he is suffering from at the time the gift is made. (See DONATIO MORTIS CAUSA.) As to the stamp duty on a conveyance operating as a voluntary disposition *inter vivos*, see Section 74 of the Finance (1909–10) Act, 1910, under heading CONVEYANCE.

Section 47 of the Finance Act, 1946, provides, as to gifts and dispositions *inter vivos*, that in the case of a person dying on or after 30th April, 1909, the period preceding the death of the deceased before which a disposition purporting to operate as an immediate gift *inter vivos* must have been made, in order that the property taken under the disposition may not be included as property passing on the death of the deceased, and so liable to death duties, shall be five years before the death.

If the donee is a charity, the period remains at one year.

So much of this Section as makes gifts *inter vivos* property which is deemed to pass on the death shall not apply to gifts made in consideration of marriage. (See DEED OF GIFT.)

GILT-EDGED BILL. A gilt-edged bill is a bill drawn and negotiated, of which the drawer, acceptor and indorsers all enjoy the highest credit.

GILT-EDGED SECURITIES. Securities of the highest order and which are considered to be absolutely safe, particularly as to the payment of the interest thereon. The marketable value of many "gilt-edged" securities (e.g. Consols), cannot, however, be always considered more stable than the marketable value of many other securities which are not classed as "gilt-edged."

Stocks in which trustees may by statute invest the trust moneys are "gilt-edged." (See TRUSTEE INVESTMENTS.)

GIVERS ON. In connection with the Stock Exchange settlements, a "giver on" is a broker who lends stock to a broker who requires it for delivery, and gives interest for the money lent to him on the stock. (See TAKERS-IN.)

GOLD AND SILVER (EXPORT CONTROL, ETC.) ACT, 1920. By Section 1, gold and silver coin and bullion were added to the articles mentioned in Section 8 of the Customs and Inland Revenue Act, 1879 (which enables the exportation of certain articles to be prohibited). The Section was to continue in force till 31st December, 1925, unless Parliament otherwise determined.

By Section 2 the melting of gold and silver coin was prohibited (except under licence of the Treasury).

From the Spring of 1919, first under war powers and later under the above Act, the export of gold was prohibited, except under licence of the Treasury.

The Bank of England was granted, as from 29th April, 1925, a general licence to export gold until 31st December, 1925, when the Act prohibiting the export expired and was not renewed.

Great Britain thus resumed its international position as a gold standard country from April, 1925, a status which was suspended on 21st September, 1931, when Subsection (2) of Section 1 of the Gold Standard Act, 1925, was suspended. (See GOLD STANDARD ACT, 1925.)

GOLD BONDS. In the past it has been a common practice in certain countries, particularly in the U.S.A., to issue bonds bearing a clause promising payment of interest (and, if the bonds were redeemable, repayment) in gold coin of a standard fineness. Since the commencement of the progressive abandonment of the gold standard, there have been several attempts by bondholders to enforce gold clauses. Sometimes these attempts have been successful, but at other times they have failed owing either to overriding national laws (as in the U.S.A.) or to a Court's unwillingness to agree with the bondholders' interpretation of the clause.

Of the cases which have come before a British Court, the following may be mentioned—

1. *In re Société Intercommunale Belge d'Electricité*: *Feist* v. *the Company*. (See *The Times*, 16th December, 1933, and *Journal of the Institute of Bankers*, January, 1934.)

The decision of the House of Lords in this case upheld the validity of the gold clause incorporated in the particular bonds in question, since the facts showed that the interpretation of the clause was subject to English law.

2. *The King* v. *International Trustee for Protection of Bondholders A.G.* (See *The Times*, 15th March, 1937.)

This was originally an action to enforce payment of principal and interest in dollars at their former gold value. The House of Lords, reversing the judgment of the Court of Appeal, held that as American law applied to the contract, there only remained an obligation to pay depreciated dollars or else sterling at a rate of 4.86⅓ to the pound.

3. *British and French Corporation* v. *New Brunswick Railway*. (See *Financial Times* Supplement, 5th April, 1937.)

In this case the clause which the bondholders sought to enforce was incorporated in £100 bonds dated 1884, and the Court held that, in view of the date, the clause only amounted to an undertaking to pay sterling and repayment of the bonds would be satisfied by a payment of their nominal amount.

From these three cases there emerges a fairly clear body of legal doctrine. As a rule, pre-war "gold clauses" will not be upheld, certainly not if the bonds are expressed in sterling. Bonds where the contract was entered into under the laws of the United States are subject to Congress's decision to annul the operation of gold clauses, but where the laws of England apply to the contract, the clause will generally be enforced in favour of the bondholder, subject always to the original intention of the parties and to the exact construction of the words used.

GOLD BULLION STANDARD. A monetary system under which gold coins are not in circulation, the internal circulating medium being token paper money and silver and copper. The free import and export of unminted bulk gold is allowed for international payments and the Central Bank will buy or sell gold at current market rates.

GOLD CERTIFICATES. Certificates which are issued by the Treasury of the United States as part of the paper currency. Gold is held against them and they are payable in gold. The certificates are for amounts from $20 to $10,000.

GOLD CLAUSE. (See GOLD BONDS.)

GOLD COIN. Since the late fifth century in this country, gold coins have circulated intermittently, and during the reign of Edward III, probably about 1343 or 1344, a national gold currency was established. Gold florins and guineas finally had the gold £1 substituted for them in 1816 as the legal standard unit. This new gold "sovereign" was to weigh 123·27447 grains of standard gold, eleven-twelfths fine, and be supported by a token silver coinage. Gold coin is legal tender for any amount as long as it does not fall below 122·5 grains. (See LIGHT GOLD.) In 1914 gold was called in from circulation, by means of notices and posters, but no compulsion was used and it was not until 1919, after the war was over, that it was prohibited to export "gold coin, and bullion," although it had not actually been minted since 1917. The return to gold in 1925, in which year there was a mintage of gold, did not mean a return to the circulation of gold coin, but a return to gold coin reserve; this had a severe deflationary effect, and was finally abandoned in 1931 in favour of a gold bullion reserve.

GOLD EXCHANGE STANDARD. This has been called the elastic gold standard by which the standard of value is still reckoned in so much fine gold, whether coin or bullion, but the actual value is preserved by the purchase and sale of foreign exchange by the Central Institution. The money in circulation is consequently token money.

GOLD POINTS. (See SPECIE POINTS.)

GOLD RESERVES. This term formerly denoted the stocks of gold coin and bullion held as cover for an issue of notes where the notes were convertible into gold on demand.

In the nineteen-thirties, the principal countries abandoned the gold standard (*q.v.*); gold coins ceased to be used as currency and notes were no longer convertible into gold. Gold was still used, however, to make international payments. The term "gold reserve" came to be used more generally to denote any stock of the metal held by a central authority for the purpose of making such payments. On the 7th September, 1939, the gold reserve of the Bank of England was transferred to the Exchange Equalisation Account (*q.v.*), and as from that date the latter authority, among its other functions, holds the country's reserves of monetary gold.

GOLD STANDARD. The system in force in this country before the war. There are three essential conditions to a gold standard proper—

1. There must be free mintage of gold into the standard legal coins.

2. There must be free and unfettered movement of gold into and out of the country.

3. The legal tender paper money of the country must be absolutely convertible into gold at will.

The restoration to the gold standard in 1925 was only partial, for the free convertibility of paper money into gold coin was subject to the option of the Bank of England and free mintage of gold was withheld. In 1931, by the Gold Standard (Amendment) Act, this partial resumption was cancelled and the Bank of England was relieved of the duty of selling gold at the legal price of £3 17s. 10½d. per ounce.

(See GOLD STANDARD ACT, 1925, and GOLD STANDARD (AMENDMENT) ACT, 1931.)

GOLD STANDARD ACT, 1925. The export of gold was prohibited, except under licence of the Treasury, from the spring of 1919 until April, 1925, when the gold standard in international matters with a free export of gold was resumed. The Gold Standard Act, 1925, was passed to facilitate the return to a gold standard and for purposes connected therewith. As explained by the Chancellor of the Exchequer, the Act provides, among other things, (1) that until otherwise provided by proclamation, the Bank of England and Treasury notes will be convertible into coin only at the option of the Bank of England; and (2) that the right to tender bullion to the Mint to be coined shall be confined in the future by law, as it has long been confined in practice, to the Bank of England.

By "Section 1. (1) Unless and until His Majesty by Proclamation otherwise directs—

"(*a*) The Bank of England, notwithstanding anything in any Act, shall not be bound to pay any note of the Bank (in this Act referred to as 'a bank note') in legal coin within the meaning of Section 6 of the Bank of England Act, 1833, and bank notes shall not cease to be legal tender by reason that the Bank do not continue to pay bank notes in such legal coin;

"(*b*) *Repealed in* 1928.

"(*c*) Section 8 of the Coinage Act, 1870 (which entitles any person bringing gold bullion to the Mint to have it assayed, coined and delivered to him) shall, except as respects gold bullion brought to the Mint by the Bank of England, cease to have effect;

"(2) So long as the preceding subsection remains in force, the Bank of England shall be bound to sell to any person who makes a demand in that behalf at the head office of the Bank during the office hours of the Bank, and pays the purchase price in any legal tender, gold bullion at the price of £3 17s. 10½d. per ounce troy of gold of the standard of fineness prescribed for gold coin by the Coinage Act, 1870, but only in the form of bars containing approximately 400 ounces troy of fine gold."

An Act was passed on 21st September, 1931, that "Subsection (2) of Section 1 of the Gold Standard Act, 1925, shall cease to have effect, notwithstanding that Subsection (1) of the said Section remains in force."

GOLD STANDARD (AMENDMENT) ACT, 1931. An Act to suspend the operation of Subsection (2) of Section 1 of the Gold Standard Act, 1925, and for purposes connected therewith. [21st September, 1931.]

"Be it enacted by the King's most Excellent Majesty, by and with the advice and consent of the Lords Spiritual and Temporal, and Commons, in this present Parliament assembled, and by the authority of the same, as follows—

"1. (1) Unless and until His Majesty by

Proclamation otherwise directs, Subsection (2) of Section 1 of the Gold Standard Act, 1925, shall cease to have effect, notwithstanding that Subsection (1) of the said Section remains in force.

"(2) The Bank of England are hereby discharged from all liabilities in respect of anything done by the Bank in contravention of the provision of the said Subsection (2) at any time after the eighteenth day of September, nineteen hundred and thirty-one, and no proceedings whatsoever shall be instituted against the Bank or any other person in respect of anything so done as aforesaid.

"(3) It shall be lawful for the Treasury to make, and from time to time vary, orders authorising the taking of such measures in relation to the exchanges and otherwise, as they may consider expedient for meeting difficulties arising in connection with the suspension of the gold standard.

"This Subsection shall continue in force for a period of six months from the passing of this Act.

"2. This Act may be cited as the Gold Standard (Amendment) Act, 1931."

The Treasury Order made under Section 1 of the Act was as follows—

"Order made by the Treasury under Section 1 of the Gold Standard (Amendment) Act, 1931.

"The Lords Commissioners of His Majesty's Treasury in pursuance of Section 1 of Gold Standard Act, hereby order that until further notice purchases of Foreign Exchange or Transfers of Funds with the object of acquiring such exchange directly or indirectly by British subjects or persons resident in the United Kingdom shall be prohibited except for the purpose of financing normal trading requirements—contracts existing before 21st September—reasonable travelling facilities or other personal purposes."

(Signed) PHILIP SNOWDEN.

22nd September, 1931.

GOLDSMITHS' NOTES. The prototypes of the modern bank notes.

Before banking became a separate business in this country, goldsmiths received money on deposit and the receipts given for the money were called goldsmiths' notes. The notes were payable on demand, and circulated instead of coins.

GOOD CONSIDERATION. (See CONSIDERATION.)

GOOD DELIVERY. On the Stock Exchange a security is not a "good delivery" if it is affected with some irregularity such as absence of coupons, or necessary stamps; or, in the case of a bearer security, if a holder has written his name on it.

A certified transfer is accepted as a "good delivery."

GOOD FAITH. By the Bills of Exchange Act, 1882, Section 90—

"A thing is deemed to be done in good faith, within the meaning of this Act, where it is in fact done honestly, whether it is done negligently or not."

The same definition is given in the Sale of Goods Act, 1893.

In a case in 1892, Lord Herschell said: "If there is anything which excites the suspicion that there is something wrong in the transaction, the taker of the instrument is not acting in good faith, if he shuts his eyes to the facts presented to him and puts the suspicions aside without further inquiry." (See FACTORS ACT, HOLDER IN DUE COURSE.)

GOOD LEASEHOLD TITLE. A lease may be registered under the Land Registration Act, 1925, with a good leasehold title, if for twenty-one years or more unexpired. If the applicant for first registration is the original lessee a good leasehold title may be granted on his written statement that he has not created any encumbrances. A good leasehold title may be converted into an absolute title after ten years, on proof that the proprietor or successive proprietors have been in possession for that time. (Land Registration Act, 1925, Section 77 (4).) (See LAND REGISTRATION.)

GOODS. Where goods are in the custody of third parties a banker may advance upon them on receiving the bill of lading (*q.v.*) or the warrants which are the symbols or representatives of the goods. For further information see under DELIVERY ORDER, TRUST RECEIPT, WAREHOUSE-KEEPER'S CERTIFICATE OR RECEIPT, WARRANT FOR GOODS. "The all-important condition of successful financing of produce is to finance only for customers upon whom the bank can rely in regard to character, experience and means." For full information on this subject reference should be made to *Bankers' Advances Against Produce*, by Alfred Williams.

If the goods are actually in the possession

of the customer who desires an advance upon them, the security may be obtained by the goods being placed in a warehouse or building rented by the bank, the customer signing a document or letter of hypothecation, to show that the goods have been pledged for the advance and to give the banker a right to sell the goods, if necessary. In this way the goods are under the absolute control of the banker and cannot be dealt with until he releases them. Warrants for the goods are also furnished by the owner to the banker, and when any of the goods are sold the warrants require to be indorsed over by the banker to the purchaser. The goods should be insured in the banker's name.

GOODS AND CHATTELS. (See CHATTELS.)

GOODWILL. When a business is sold the expression "goodwill" is used to indicate the benefit which the purchaser may be expected to obtain from the business connection formed in the premises, or from the good name which the vendor has created for himself. The goodwill of certain businesses is a valuable asset, and in selling a goodwill its value will depend partly upon the vendor agreeing not to enter into competition with the purchaser.

Goodwill is usually valued at a certain number of years purchase of the annual profits, three to five years being the normal figure.

When a banker examines a balance sheet in which an item for goodwill appears, he will usually place no value on the item.

GOSCHENS. A name sometimes given on the Stock Exchange to 2½ per cent Consols, because Mr. Goschen was responsible for the conversion of Consols from 3 per cent to 2½ per cent.

GOVERNMENT STOCK. (See NATIONAL DEBT.)

GRANT. A conveyance in writing.

GREENBACKS. The popular name for the notes first issued by the Government of the United States in 1862. The backs of the notes are printed in green ink, whence the origin of the term, "greenbacks." They are legal tender in that country.

GRESHAM'S LAW. Where new coins and old worn coins are current at the same time, the new coins gradually disappear and leave the old worn ones in circulation. The first person who discovered and explained the cause of the disappearance of good coins from circulation was Sir Thomas Gresham in the sixteenth century. The principle or law (now called Gresham's Law) which he stated is: "If coins of the same metal, but of varying weight and quality, circulate together at the same nominal value, the worse coins will tend to drive the better from circulation, but the better will never drive out the worse."

The practice of picking out the gold coins of full weight and leaving the light ones in circulation (called garbling the coinage) is carried on principally by goldsmiths or other persons who melt the coins for jewellery, or export them and sell them by weight. In the ordinary course of business very little attention is paid to a coin, so long as the stamp upon it is visible, whether it is a light one or not. (See COINAGE.)

GROAT. Fourpence. Its standard weight is 29·09090 grains troy, but it is not now issued except as Maundy money (*q.v.*).

Groat is from the French word *gros*, indicating the size of the coin, as, when first coined by Edward III, it was the largest silver coin then known. (See COINAGE.)

GROSS PROFIT. The total profit, or gain, before the deduction of expenses.

GROSS RENTAL. The rent of a property before the deduction of rates, taxes, repairs or other outgoings. (See VALUATION.)

GROUND RENTS. Rents which are reserved to the owner of a freehold and which are payable by the person to whom the land has been leased. For example, if the owner of freehold land leases a portion to a person, called the lessee or leaseholder, he stipulates that he must receive, during the continuance of the lease (usually a term of 99 years), a certain yearly rent, that is a ground rent. In the case of a building lease the lessee is obliged to build upon the land, and as he erects houses he sub-leases them to other parties, who in their turn pay ground rents to him. If the lessee pays a ground rent to the freeholder or lessor, of, say, £100 a year, and the lessee builds houses, and sub-leases, say, twenty houses at a ground rent of £10 each per annum, the lessee thus obtains £200 a year and, after paying the freeholder the £100, he has a profit left of £100 a year; this profit is termed the improved ground rent. At the termination of a lease the buildings become the property of the lessor.

When ground rents are purchased, the purchaser acquires the rights of the freeholder, that is the right to receive the ground rents during the continuance of the original lease and at the end of the lease to take possession of the land with the buildings thereon. As the end of the lease approaches his investment will naturally increase much in value. An investment in such ground rents

is therefore an improving one year by year, but in the case of an investment in improved ground rents it is just the opposite, for the purchaser's rights to receive the rents continue only during the unexpired period of the lease. The value of his investment will accordingly depreciate in value year by year, and at the same time he will be required to pay the full ground rent to the owner of the freehold. The position of the owner of ground rents is a safe one, for the buildings on the land are an assurance that the rent will be punctually paid, and at the end of the lease he will, in an ordinary case, be able to let the property for more than the ground rent. If, during the continuance of the lease, the lessee failed to pay the ground rent, the lessor would have the right to re-enter into possession of the land with the buildings attached. If, however, ground rents alone are purchased, that is *without* the rights to the freehold, then this investment will be a depreciating one and will become extinct at the termination of the lease.

Where ground rents are offered as a security, the banker should ascertain what buildings there are upon the land, otherwise he might find himself in possession of security with insufficient or even without any buildings to secure the rents.

GUARANTEE. GUARANTY. (French *garantir*, to warrant.) A guarantee is an undertaking by one person (called the guarantor) given to a banker (the creditor), to be answerable for the debt of another person (the debtor) to the banker, upon default of the debtor.

In Lord Halsbury's *Laws of England* a guarantee is defined as "an accessory contract whereby the promiser undertakes to be answerable to the promisee for the debt, default or miscarriages of another person whose primary liability to the promisee must exist or be contemplated."

A depositor of security to secure another's account is a guarantor or surety. (*Re Conley*, [1937] 4 All E.R. 438.)

In order to be enforceable at law, a guarantee must be in writing. By the Statute of Frauds (29 Car. II, c. 3), Section 4, it is enacted that "no action shall be brought whereby to charge the defendant upon any special promise to answer for the debt, default or miscarriages of another person, unless the agreement upon which such action shall be brought, or some memorandum or note thereof shall be in writing and signed by the party to be charged therewith, or some other person thereunto by him lawfully authorised."

"There can be no surety without a principal." (Lord Justice Farwell in *Wauthier* v. *Wilson* (1912), 28 T.L.R. 239.)

To be legally effective a guarantee must be given for a debt which is enforceable. If the debt is not enforceable, the guarantee will not be enforceable. Thus, a minor not being answerable for a debt he incurs, a guarantee for such debt is likewise void. (*Coutts & Co.* v. *Brown Lecky and Others*, [1946] 2 All E.R. 207.) Likewise, a guarantee to secure an account opened under an impersonal heading, such as "Blackwall Parish Hall" is legally invalid, as a parish hall cannot, of course, be sued for a debt. (See SOCIETIES.)

Some banks include a clause in their form of guarantee providing that where the debtor is under a legal disability, such as a minor, etc., the surety shall be liable as principal.

A guarantee is a very convenient form of security, and because of the ease with which it can be given, a banker should be careful to make clear to a proposed surety the nature of the document which he has to sign, although such a party cannot later plead ignorance of the contents of the guarantee.

A contract of suretyship should be entered into freely and voluntarily by the guarantor. "Everything like pressure used by the intending creditor will have a very serious effect on the validity of the contract." (Mr. Justice Fry in *Davies* v. *London and Provincial Marine Insurance Company* (1878), 8 Ch.D. 469.)

Where a woman gives a guarantee it is desirable that she should be separately advised by a solicitor so that she shall not at a later date set up that she did not understand the transaction. Alternatively she should sign an admission that she understands the nature of the transaction, and where a married woman guarantees her husband's account she should in addition acknowledge that she enters into the liability of her own free will and accord, otherwise she may set up undue influence.

In *Bank of Montreal* v. *Stuart and Another* (1910), 103 L.T. 641, a wife gave a guarantee to a bank in order to help her husband and a company in which he was interested and which was in pecuniary difficulties. She alleged that she acted of her own free will, without any pressure having been put upon her, but it appeared that she acted in passive obedience to her husband's directions and would have signed anything that he asked her to sign and had no means of forming an independent judgment even if she had

desired to do so. It was held that the transaction could not stand. Lord Macnaghten said: "In the case of husband and wife the burden of proving undue influence lies upon those who allege it. It is difficult to determine in any case the point at which the influence of one mind upon another amounts to undue influence. It is especially so in the case of husband and wife. . . . It may well be argued that where there is evidence of overpowering influence and the transaction brought about is immoderate and irrational, as it was in the present case, proof of undue influence is complete."

In an ordinary case a banker is not obliged to give information, voluntarily, to a proposed surety, regarding the debtor's affairs. "Unless questions are particularly put by the surety to gain this information, I hold that it is quite unnecessary for the creditor, to whom the suretyship is given, to make any such disclosure." (Lord Campbell, in *Hamilton* v. *Watson* (1845), 12 Cl. & Fin. 109.)

"The only circumstance in which a duty to disclose would emerge, and a failure to disclose would be fatal to the bank's case, would be where a customer put a question, or made an observation in the hearing of the bank agent, which would inevitably lead anyone to the conclusion that the intending guarantor was labouring under a misapprehension as to the state of the customer's indebtedness." (*Royal Bank of Scotland* v. *Greenshields*, [1914] S.C. 259.)

In *National Provincial Bank of England* v. *Glanusk* (1913), 109 L.T. 103, the defendant guaranteed all moneys which might be due to the plaintiffs on any accounts whatever from one Coles, who was defendant's agent. The plaintiff's manager became aware that Coles was paying a debt due from him to another bank by an overdraft on the plaintiffs. He did not communicate this fact to the defendant, and it was contended that the latter was discharged from liability under the guarantee by reason of the failure of the plaintiffs to inform him of the above fact which might have indicated to him that his agent was behaving improperly towards him. It was held that there was no duty upon the plaintiffs to communicate to the defendant their suspicion that Coles was not acting properly towards him and consequently that the failure to make such communication did not discharge the defendant from liability under the guarantee.

In *Cooper* v. *National Provincial Bank, Ltd.* [1945] 2 All E.R. 641, a guarantor sought to repudiate his liability on the grounds that the bank did not disclose to him that the husband of the principal debtor was an undischarged bankrupt, that he had power to sign on his wife's account, and that the account had been conducted irregularly. It was held that these were not such unusual features as to warrant voluntary disclosure by the bank, particularly as the husband was not using the account as a cloak for his own business activities.

If a guarantor inquires as to the extent of his liability upon the account for which he is surety, he is entitled to the information, but a banker should not exhibit the debtor's account to a surety or give details regarding it.

In estimating the value of anyone as a surety the point is, as George Rae puts it in *The Country Banker*: "Not what you might be able to squeeze out of him by process of exhaustion, but what he could at any time pay, over and above his other engagements, without serious inconvenience or detriment to himself. That is the true meaning of his fitness as a surety; and if you take him for more than this, you may do him a fatal disservice, and possibly lay the foundation of a bad debt for yourselves."

A guarantee may take the form of a bond or a guarantee under seal, in which cases an *ad valorem* stamp of 5s. per cent is required. The usual form, however, is a guarantee under hand. The stamp duty on a guarantee under hand is sixpence (see AGREEMENT). The stamp may be either impressed or adhesive; if adhesive, it must be cancelled by the first person signing the guarantee. If the document has been signed before being stamped, the stamp may be impressed within fourteen days from its date. If a guarantee is sealed by a company, the document is subject to *ad valorem* duty of 5s. per cent. (See BOND.)

It is essential that a guarantee form should be most carefully drawn so as to create an effective security, and bankers have their own printed forms of guarantees drafted so as to meet, as far as possible, the various requirements of a good and complete guarantee.

The surety's signature should, as a rule, be witnessed by a bank official, and some bankers require it to be witnessed by two officials. Where the surety lives in another town, the document should be sent to a bank in that town and the surety be requested to call there to sign it.

If there are any alterations in the

document, they should be initialed by the guarantor; and if the guarantee being given is in addition to one already signed by him for the same account, a clause should be added at the end of the guarantee, if not already contained therein, to the effect that "this guarantee is in addition to and not in substitution of my guarantee dated for £ ," and the clause should be signed by the guarantor.

Where there are more guarantors than one, the guarantee should be "joint and several." The banker can then sue one, or all, of the guarantors as he may consider necessary. If he sues one surety and fails to obtain all that is required, he may then sue the others. This could not be done if the guarantee was "joint" only. In a "joint" guarantee, all the sureties must be sued together, and if one of them died his estate would not be liable. The banker in that case would have to look to the surviving guarantors; but if the guarantee is "joint and several" the estate of a deceased surety would be liable. In a "several" guarantee each one of the guarantors may be sued separately for the full amount. The most satisfactory guarantee for a banker to take is, therefore, a "joint and several" one.

A consideration is not necessary in a guarantee under seal, but in a guarantee under hand, i.e. a simple contract, there must be a consideration. The consideration, as a general rule, is the granting of an advance to a customer against the guarantee, or it may be the granting of further time to a debtor. A banker's guarantee usually states the consideration, but the document is not invalid merely by reason that the consideration is not expressed therein. (Mercantile Law Amendment Act, 1856, Section 3.) In a guarantee simply for a past debt there would be no legal consideration, but that point is covered in the usual form of banker's guarantee, e.g.: "In consideration of the Bank allowing . . . to keep or to continue an account with them or otherwise granting him banking facilities or accommodation upon the terms that the Bank should be secured as hereinafter appears, I hereby guarantee," etc.

An important point in connection with a guarantee is that it should be a continuing guarantee, that is, a security which will continue, although the balance of the debtor's account may fluctuate from time to time. A guarantee should therefore expressly state that it "shall be a continuing guarantee," otherwise it might be held to cover merely the debt which existed at the time the guarantee was given.

Upon the expiration of notice from a surety to determine his guarantee, the debtor's account or accounts should be broken, and the banker should communicate at once with his customer. Unless the account is broken all payments to credit will go to release the surety, and all debits will form a fresh unsecured advance. The customer's written consent to the opening of the new account should, if possible, be obtained.

But where a guarantee contained this clause—

> "In the event of this guarantee being determined either by notice by me or my legal personal representatives, or by demand in writing by the bank, it shall be lawful for the bank to continue the account with the principal, notwithstanding such determination, and the liability of myself or my estate for the amount due from the principal at the date when the guarantee is so determined, shall remain, notwithstanding any subsequent payment into or out of the account by or on behalf of the principal,"

it was held to avoid the operation of the rule in *Clayton's* case in circumstances where the account was not broken on determination of the guarantee and subsequent credits to the account were sufficient to extinguish the overdraft existing at the time of determination. (*Westminster Bank, Ltd.* v. *Cond* (1940), 46 Com. Cas. 60.)

Where a guarantee for, say, £1,000 is to continue in force until the expiration of three months' notice in writing, and when the account is overdrawn, say, £500, the surety gives notice, can the banker let the customer go on drawing cheques pending expiry of the notice and let him draw out the whole £1,000? Sir John Paget, in his Gilbart Lecture (No. 3), 1909, considers that "the banker would run great risk if he adopted this course voluntarily . . . all outstanding cheques, bills accepted for the customer prior to revocation and maturing during pendency of notice and things of that sort are covered by the clause. Possibly it might cover other transactions in the ordinary course of business begun prior to revocation and completed during currency of notice." An eminent lawyer, however, takes the opposite view and believes the Courts would give effect to such a clause, even as regards voluntary advances made after receipt of notice. If a man guaranteed an overdraft to

a firm of manufacturers who, relying on the stipulation for three months' notice, committed themselves to certain expenditure, it would not be equitable that the guarantor should seek to evade the obligation to give notice, and thereby threaten the guaranteed firm with ruin. While a bank should not attempt to hold a guarantor to his bargain under conditions which would entail unnecessary hardship to the guarantor, there is good reason to believe that the Courts would uphold the clause if the banker, to protect his own interests or those of his customer, should be induced to rely upon it. (*Journal of the Institute of Bankers*, April, 1922.)

With respect to a guarantee which contained the words "to continue in force until three months after notice," it has been held that notice to the bank of the death of the guarantor amounted to a determination of the guarantee so far as future advances were concerned. But some guarantee forms provide for three months' notice by the personal representatives of the deceased guarantor. In such a case the executors should be immediately advised of the existence of the liability and the terms of its determination.

If there is no question of notice arising, when the surety informs the banker that he withdraws from any further liability under his guarantee, it will be at the banker's own risk if he pays any further cheques after receipt of such notice; but if he has promised the debtor to pay certain specific cheques, those cheques must be paid. The banker should see his customer at once as to the withdrawal of the guarantee. Some guarantees expressly state that the guarantee shall continue "until you shall receive notice in writing from me withdrawing the same, provided that the receipt of such notice shall not affect my liability hereunder in respect of any moneys that may then be due to you from the debtor, or subsequent interest thereon, nor in respect of any bills, notes, drafts, cheques or other instruments which may then be outstanding, or any transaction which may then be pending."

The limitation in a guarantee should always be in respect of the liability and never of the advance. Otherwise if the debt is allowed to exceed the specified amount, it might be contended that the guarantee was void. More important is the effect of limitation of the liability and not of the advance as regards the debtor's bankruptcy, for it will give the creditor the right to prove on the debtor's estate for the whole debt and to use the sum paid by the surety for any deficiency; the creditor is not bound to deduct the amount paid under the guarantee before proving, and the guarantor cannot prove unless he pays, not the amount mentioned or the limit of his liability, but the entire debt.

In the case of *In re Sass, ex parte National Provincial Bank of England*, [1896] 2 Q.B. 12, a surety guaranteed the payment of all sums of money which were or might from time to time become due or owing to the bank on the account of S. and the guarantee was limited to the amount of £300. The guarantee gave the bank the right to receive dividends from the debtor's estate. On the bankruptcy of S. the bank, after receiving the £300 from the surety, claimed to prove on the estate for the full amount due. It was held by Vaughan Williams, J., that although the surety's liability was limited, still "his suretyship was in respect of the whole debt, and he, having paid only a part of that debt, has in my judgment no right of proof in preference or priority to the bank to whom he became guarantor."

Under a banker's ordinary guarantee form, the banker can prove upon his customer's estate for the full amount of the debt (allowing for any securities held from the debtor himself) and require payment in full, if necessary, from the guarantor of the amount of his guarantee.

Upon default of a debtor, a banker should require immediate payment by a surety of the amount of his guarantee. When the guarantor pays up, the amount should be placed to a separate account, and not go directly in reduction of the debtor's account, if the banker intends to claim upon the debtor's estate. In such a case, the guarantee should not be cancelled, nor an absolute discharge given to the guarantor. If the sum tendered by the guarantor is sufficient to clear off the debt, the amount is usually placed at once to credit of the debtor's account. Many guarantees specifically empower the banker to place any such moneys to a separate or suspense account.

When one of, say, two guarantors pays up a part of the amount of the guarantee, the guarantors are released to the extent of the amount paid, but the banker can sue either or both the guarantors for the balance of the guarantee.

If after all dividends have been received from the bankrupt's estate, the guarantee money in the banker's hands should be more than sufficient to pay off the indebtedness

the balance remaining should be returned to the surety, or, if several sureties, to each one in proportion to the amount he paid.

When a banker has demanded payment from a surety, no further cheques should be debited to the debtor's account, unless notice was given to the surety, when the demand was made, of the existence of further claims by the bank upon the debtor.

Upon receiving notice of the death of a surety, the debtor's account or accounts should be stopped pending fresh arrangements, unless the guarantee expressly provides that the estate of the deceased surety is to continue liable.

Where there are several sureties and one of them dies, the account should be broken, until a fresh guarantee is signed or the surviving sureties have given a written request (stamped 6d.) that the existing guarantee be continued.

If a deceased surety's estate is to be held liable, notice of the guarantee should be given to the legal representatives.

The lunacy of a guarantor operates in the same way as the death of a guarantor. In *Bradford Old Bank* v. *Sutcliffe* (1918), 34 T.L.R. 299, where it was argued for the plaintiffs that, as this was a continuing guarantee with a clause giving the guarantors, their executors and administrators, power to terminate it by three months' notice, it did not determine, but continued to be operative after the lunacy of the guarantor, it was held that "this is wrong; the notice clause has nothing to do with lunacy. So far as lunacy is concerned, the guarantee makes no provision for that event; it was neither contemplated nor provided for in the document. The bank, when it had received notice of the lunacy, could no longer make advances upon the faith of the guarantee. Lunacy operated upon this guarantee just as death operates upon a continuing guarantee, and it contains no provision requiring a notice to terminate it. The creditor then knows that the guarantor has no longer a contracting mind, and consequently cannot be fixed with a contractual liability by an act done by the creditor alone." (See further report of this case under BROKEN ACCOUNT.)

When a surety has paid off the full amount of the debt on the account for which he is guarantor, he is entitled to the rights of the banker, that is to sue the debtor and to receive the benefit of any securities held by the banker for the debt, whether the securities were held at the time the guarantee was given, or were subsequently received.

By the Mercantile Law Amendment Act, 1856, Section 5—

"Every person who, being surety for the debt or duty of another, or being liable with another for any debt or duty, shall pay such debt or perform such duty, shall be entitled to have assigned to him, or to a trustee for him, every judgment, specialty, or other security which shall be held by the creditor in respect of such debt or duty, whether such judgment, specialty, or other security shall or shall not be deemed at law to have been satisfied by the payment of the debt or performance of the duty, and such person shall be entitled to stand in the place of the creditor, and to use all the remedies, and, if need be, and upon a proper indemnity, to use the name of the creditor, in any action, or other proceeding, at law or in equity, in order to obtain from the principal debtor, or any co-surety, co-contractor, or co-debtor, as the case may be, indemnification for the advances made and loss sustained by the person who shall have so paid such debt or performed such duty, and such payment or performance so made by such surety shall not be pleadable in bar of any such action or other proceedings by him: provided always that no co-surety, co-contractor, or co-debtor, shall be entitled to recover from any other co-surety, co-contractor, or co-debtor, by the means aforesaid, more than the just proportion to which, as between those parties themselves, such last-mentioned person shall be justly liable." (See SUBROGATION.)

When a surety pays off an account and requires any securities to be given up to him, the banker should, before parting with them, communicate with the debtor or any other parties concerned with the account. A surety is not entitled to any of the debtor's securities held for the account unless the whole debt is paid off, and this is provided for in the usual banker's guarantee form.

Where a guarantor has discharged his liability under a guarantee, a banker is frequently asked to supply a certificate stating that included in the payment was a certain sum for interest, the object being that the guarantor may claim repayment of income tax on the interest debited to the account. In *Commissioners of Inland Revenue* v. *Holder* (*The Times*, 12th March, 1931), where a guarantor paid off his liability to a bank and claimed repayment of the income tax on the interest debited to the account, the Master of the Rolls held that the interest

debited to the overdrawn account each year had, in fact, been capitalised with the approval of the principal debtor, and that the sum paid by the guarantor was capital and not capital plus interest.

But where a guarantor is given time to redeem his liability on condition that he provides the interest at the customary periods, and that the debt is transferred into his name, he is entitled to relief and a bank interest certificate may be given him. But sometimes it is not desirable to transfer the debt into the guarantor's name, thereby releasing the principal debtor. If, therefore, the debt remains in the latter's name and the guarantor provides the interest on the debt in consideration of being granted time, he cannot as of right claim relief, for it is not his advance. But Inspectors of Taxes are known to exercise their discretion in such cases, and to recognise a bank interest certificate given to a surety in such a case.

If, under a joint and several guarantee, a banker obtains payment of the full amount of the guarantee from one of the sureties, that surety can call upon his co-sureties to pay him their proportion of the amount. Unless specially provided against in the guarantee, if a banker releases one of several joint co-sureties that release may have the effect of releasing all the sureties. Before releasing one of several sureties a banker should, unless the guarantee provides for such a release, obtain the written assent (stamped 6d.) of the other sureties, or take a fresh guarantee.

When a surety gives notice to terminate a guarantee, the banker should, if possible, obtain the notice in writing. If the surety subsequently withdraws his notice, a fresh guarantee should be signed.

A guarantee under hand is barred by the Limitation Act, 1939, in six years from the date when the right of action first accrued against the guarantor. In *Bradford Old Bank* v. *Sutcliffe*, [1918] 2 K.B. 833, where in a guarantee there was an undertaking to pay "on demand," it was held that there was no cause of action till after the demand. Pickford, L.J., in the course of his judgment, said that in the case of what has been called a direct liability, for example a promissory note payable on demand, the liability exists as soon as the loan is made, and the words "on demand" may be neglected. "It has, however, been held long ago that this doctrine does not apply to what has been called a collateral promise or collateral debt, and I think that a promise by a surety to pay the original debt is such a collateral promise or creates a collateral debt." Where the guarantee does not expressly stipulate that demand shall precede payment by the guarantor, see the case *Parr's Banking Coy.* v. *Yates* below.

If there is a clause in the guarantee that payment is to be made " days after demand," the statute in such a case will not begin to run until the demand has been made. It is advisable to get all guarantees under hand renewed before they are six years old, as it brings to the notice of the surety the fact that his liability still continues, and avoids any danger there may be of the operation of the Limitation Act, 1939.

A guarantee under seal is not barred till twelve years from the date when the cause of action arose. And if the guarantee is in respect of a debt secured by a mortgage of land, the period is twelve years by the Real Property Limitation Act of 1874, whether the covenant of the surety is in the mortgage deed itself, or is contained in a collateral bond. Payments to the credit of an account by a debtor keep the debt alive as against the debtor, but they do not prevent the statute from running in favour of a surety. (See LIMITATION ACT, 1939.)

In the case of *Parr's Banking Company* v. *Yates*, [1898] 2 Q.B. 460, where the bank held a continuing guarantee (which did not include an express covenant to pay on demand) from Yates for an account, Vaughan Williams, L.J., said: "My view is that the cause of action on the guarantee arose as to each item of the account, whether principal, interest, commission, or other banking charge as soon as that item became due and was not paid, and, consequently, the Statute of Limitations began to run in favour of the defendant in respect of each item from that date. I agree with what my brothers have said with regard to the claim for interest. I think that the interest stands on the same footing as any other item to the debit of the party guaranteed in the account; and that the defendant continues liable as guarantor in respect of interest which has accrued within six years before action, and does not get rid of that liability because his liability to be sued on the guarantee with regard to the principal has become barred by the Statute of Limitations. I also agree that there is no ground for saying that there is any rule which could apply the payments which have been made to the interest on the advances made to the party guaranteed as distinguished from the principal. According to the

ordinary practice of bankers, the interest due is from time to time added to the principal, and becomes itself part of the principal due."

When a surety guarantees the general balance of the customer's account, in order to ascertain that balance, all accounts between the customer and the banker at the time the guarantee comes to an end must be taken into account. (*In re Sherry, London and County Banking Co.* v. *Terry* (1884), 25 Ch.D. 692.) In such cases all the customer's accounts should be broken, including any account with a credit balance.

A guarantee for the general balance of all the accounts of a customer is to be distinguished from a guarantee for an advance on a specific account only. In the latter case, on the determination of the guarantee, the surety would be liable only for the balance of that specified account. When an account is broken, upon the determination of a guarantee, and a new and distinct account is opened for future receipts and payments, any credit balance on this new account does not go to release the surety's liability on the old account, and any overdraft on the new account is not covered by the old guarantee. As to the position when the account is not broken, see the case of *Bradford Old Bank* v. *Sutcliffe* under BROKEN ACCOUNT. In that case there was a loan account and an unbroken working account, and the bank had received notice of the insanity of a guarantor for the accounts.

Upon the failure of a guarantor, unless the debtor supplies other security, the banker should call in his advance and, if repayment is not made, claim upon the surety's estate. The debtor's account should be broken on receipt of the notice.

Where there are several sureties and one of them dies, or becomes bankrupt, or gives notice to terminate his liability, the account of the debtor should be broken until fresh arrangements are made.

Any material variation of the original agreement between the debtor and creditor, unless provided for in the guarantee or made with the assent of the guarantor, will have the effect of releasing the guarantor from liability. In *Samuel* v. *Howarth* (1817), 3 Mer. 272, Lord Eldon said: "The surety is held to be discharged for this reason, because the creditor, by so giving time to the principal, has put it out of the power of the surety to consider whether he will have recourse to his remedy against the principal or not, and because he, in fact, cannot have the same remedy against the principal as he would have had under the original contract."

Where a guarantee has been given for a fixed period and at the end of that period it is arranged that it be continued for a further period, either a new guarantee should be taken or the old guarantee should be indorsed accordingly and bear another sixpenny stamp. Any such indorsement should, of course, be signed by the guarantor, or, if more than one, by all of them. If a new guarantee has not been obtained, or the old one extended, before the fixed period expires, the account should be stopped when the date arrives until a fresh arrangement is made.

A guarantee by a married woman can be enforced only against her separate estate. (See MARRIED WOMAN.)

In the case of a guarantee by a firm, it should, in order to avoid the risk of any future trouble, be signed by each partner.

Where a change of partnership takes place and a guarantee is held for the account, unless the form provides for such change, the account should be broken until fresh arrangements are made. Even if the guarantee contains such provision, it is necessary to break the account if the banker intends to claim on the estate of the partner who has died, or retired, or become bankrupt.

By Section 18 of the Partnership Act, 1890: "A continuing guaranty or cautionary obligation given either to a firm or to a third person in respect of the transactions of a firm is, in the absence of agreement to the contrary, revoked as to future transactions by any change in the constitution of the firm to which, or of the firm in respect of the transactions of which, the guaranty or obligation was given."

Before accepting a guarantee by a company, a banker should see that the memorandum of association gives power to the company to give a guarantee.

In the case of *Yorkshire Wagon Co.* v. *Maclure* (1882), 19 Ch.D. 478, where the directors had borrowed *ultra vires* and given their personal guarantee, and it was contended that as the transaction was *ultra vires* there was no liability on the guarantee, for where there was no principal there could be no surety, the Court held that the directors were liable on their guarantee. In *Garrard* v. *James*, [1925], *Weekly Notes*, page 99), the Court reaffirmed the judgment in the above case, drawing a distinction between the guarantee of a contract which was merely *ultra vires* the contractor, and one which was illegal as being contrary to public policy

or the provisions of a public statute. A guarantee to carry out an illegal contract is not enforceable.

Where, subsequent to the giving of a guarantee by directors, security of the company is taken, the resolution authorising the charging thereof should be passed in general meeting, unless the articles provide that the directors can vote on contracts in which they are personally interested. For the taking of security will lessen the guarantee liability of the directors, and to this extent they are personally interested. (*Victors, Ltd. (in liquidation)* v. *Lingard*, [1927] 1 Ch. 323.)

Under the Bankruptcy Act, 1914, Section 44, and the Companies Act, 1948, Section 320, a payment made to a creditor with the dominant motive of giving a surety or guarantor a preference over other creditors shall be void as against the trustee. (See FRAUDULENT PREFERENCE.)

When a guarantee has been discharged, or is no longer required, it should be retained by the banker after being cancelled by, or in the presence of, the surety. A cancelled guarantee may be given up to the surety if he demands it.

If an account which has been closed be subsequently reopened, any guarantee held for the old account would not be available for the new account.

As soon as a surety's obligation to pay has become absolute, he has a right in equity to be indemnified by his principal. In *Ascherson* v. *Tredegar Dry Dock and Wharf Co., Ltd.*, [1909] 2 Ch. 401, A and four other directors of a company gave a bank a joint and several guarantee to secure the overdraft on the company's current account. A died, and the bank then stopped the account on which a certain sum was owing and opened a new account. A's executors requested the company to discharge the liability, which was refused. It was held that the guarantors were entitled to be discharged by payment by the company of the sum owing. "Where there is an actual accrued debt and the surety is liable and admits liability for the amount guaranteed, he has a right to compel the principal debtor to relieve him from his liability by paying off the debt."

The above case, where the amount payable under the guarantee had been definitely ascertained, is to be distinguished from the following case where the amount had not been ascertained. In *Morrison* v. *Barking Chemicals Co., Ltd.* (1919), 122 L.T. 423, M gave a guarantee to a bank to secure an account current of the defendant company, and M sought to compel the company to give him relief from his liability to the bank under the guarantee. Sargant, J., in his judgment said that the guarantee was to continue until terminated on the initiative either of the bank or of the surety. The bank could close the account, ascertain the amount due and make demand on the surety. The surety could, by the terms of the guarantee, cause his liability to be definitely ascertained by giving the bank three months' notice to determine the guarantee. "If and when this is done there will be an immediate enforceable liability on the part of the surety of the bank, and he will then be within the decision of *Ascherson* v. *Tredegar Dry Dock and Wharf Co., Ltd.*" (See above.) "There is no accrued or definite liability on the part of the surety until there has been some such termination or ascertainment as stated." It was held that as neither of those steps had been taken M had no immediate right to compel the defendant company to relieve him from his liability.

GUARANTEED STOCK. Stock upon which the due payment of the interest is guaranteed either by the company issuing the stock or by another company or by a government. Sometimes payment of the principal also is guaranteed.

GUARANTOR. A surety. A person who gives a guarantee to a banker (or other creditor), agreeing to be answerable for the debt of another person if he defaults.

GUARD BOOK. A book for guarding or protecting loose documents. The documents are usually gummed or pasted on one margin and fastened to the paper edges in the book.

GUARDIANS OF THE POOR. By the Local Government Act, 1929, as from 1st April, 1930, the functions of each poor law authority were transferred to the council of the county or county borough comprising the poor law area for which the poor law authority acted.

GUINEA. A gold coin at one time current in Great Britain at the value of twenty-one shillings. It was first coined in 1663 from gold brought from the coast of Guinea, whence its name. It is still the custom with many people to quote fees and subscriptions in guineas rather than in pounds.

GUINEA PIG. A slang Stock Exchange expression to signify a person who acts as a director of various companies merely for the sake of the fees to be obtained.

HABENDUM. That part of a deed which begins with the words "To have and to hold" (in Law Latin *Habendum et tenendum*) and which defines what estate or interest is thereby granted.

"HALF-COMMISSION MAN." A person who introduces business to a stockbroker, and who receives a share of the broker's commission. When the commission is shared with an agent, the contract note must bear a note to that effect and the name of the agent must be given. (See CONTRACT NOTE, PREVENTION OF CORRUPTION ACT, STOCKBROKING TRANSACTIONS.)

HALF-CROWN. Half-crowns were first coined in 1551.

The standard weight of a half-crown was 218·18181 grains troy, and its standard fineness thirty-seven-fortieths fine silver, three-fortieths alloy; altered by the Coinage Act, 1920, to one-half fine silver, one-half alloy.

By the Coinage Act, 1946, these coins are now made of cupro-nickel. (See COINAGE.)

HALF NOTES. A bank note which is to be remitted by post is sometimes cut in halves, and one half sent by post. When an acknowledgment is received, the other half is sent. The receiver of halves should fix the respective halves together with strips of gummed paper, and see that the numbers correspond, otherwise much trouble will be caused if a note gets into circulation (as sometimes occurs) with a different number on each half.

A person remitting notes in halves does not part with the property in the notes until he has sent the second halves, and until then he may reclaim the first halves which he sent.

If one half of a note is lost, the issuing banker will usually pay the amount upon production of the other half, provided that a satisfactory indemnity is given for his so paying.

Half notes are legally described as goods and chattels, though notes are described as money.

HALFPENNY. It is made of bronze—that is, a mixture of copper, tin and zinc. Its standard weight is 87·50000 grains troy.

The diameter of a halfpenny is exactly one inch. (See COINAGE.)

HALF-SOVEREIGN. Its standard weight is 61·63723 grains troy and its standard fineness eleven-twelfths fine gold, one-twelfth alloy. When its weight, from wear and tear, fell below 61·125 grains troy it ceased to be legal tender. (See COINAGE.)

HAMMERED. When a member of the Stock Exchange is unable to meet his liabilities, his failure is announced in the "House" after attention has been obtained by one of the waiters giving three blows on his stand with a wooden hammer. A defaulter is thus said to be "hammered."

HAND AND SEAL. The phrase "as witness our hands and seals" which is found at the end of a deed of transfer and other deeds, refers to the signatures and seals which follow. But the word "hand" originally meant an actual impression in ink upon the deed of the person's hand.

HEDGING. (See FUTURES.)

HEIR. The heir or heir-at-law was the person entitled, by law, to the real property of a deceased person who left no will.

In ascertaining who was heir the eldest son and his descendants came first, then the other sons in order and their descendants. If there were no sons, but only daughters, they succeeded to the property as co-parceners—that is, they succeeded to it equally. Failing lineal descendants, the nearest lineal ancestor was the heir.

Heirship was abolished after 1925. (See under INTESTACY.)

HEIR-APPARENT. The person who was certain to succeed to an estate if he survived the present owner. Heirship was abolished after 1925. (See INTESTACY.)

HEIR-PRESUMPTIVE. The person who would succeed to an estate if the present owner died at once, but whose right to succeed would be cancelled in the event of a child being born having a prior right. Heirship was abolished after 1925. (See INTESTACY.)

HELD OVER. When a cheque upon a local bank is received by a banker, after the daily exchange has been made, it is usually "held over" till the following day. But cheques received by a banker, drawn upon his own office, are not (except in certain cases in connection with a local clearing in large towns) "held over," as they should either be paid or dishonoured on the day of receipt.

HEREDITAMENT. From the Latin *heredito*, I inherit.

Hereditament means any real property which on an intestacy before 1st January, 1926, might have devolved upon an heir.

(See CORPOREAL HEREDITAMENT and INCORPOREAL HEREDITAMENT.)

HERIOT. The right of the Lord of the Manor, on the death of a copyhold tenant, to take the best beast or sometimes the best chattel.

Abolished with copyhold tenure as from 1st January, 1926.

HERITABLE BOND. In Scotland, a bond by a debtor for a sum of money, which includes a conveyance of land, to be held by the creditor as security for the money. (See Appendix on "Scottish Banking" under HERITABLE SECURITIES.)

HOLDER. (See HOLDER OF BILL OF EXCHANGE.)

HOLDER FOR VALUE. A holder for value of a bill of exchange is defined by Section 27 of the Bills of Exchange Act, 1882—

"(2) Where value has at any time been given for a bill the holder is deemed to be a holder for value as regards the acceptor and all parties to the bill who became parties prior to such time.

"(3) Where the holder of a bill has a lien on it, arising either from contract or by implication of law, he is deemed to be a holder for value to the extent of the sum for which he has a lien."

By Section 30—

"(1) Every party whose signature appears on a bill is *prima facie* deemed to have become a party thereto for value."

A holder for value is not liable upon a bill unless he has endorsed it, but he may sue on the bill in his own name.

The holder for value of a bill may be the payee who is in possession of it, or an indorsee who is in possession of it, or the bearer of it.

A banker who merely collects a cheque is not a holder for value, but if he cashes a cheque drawn upon another banker he is a holder for value. The banker is also a holder for value if the cheque is paid in for the express purpose of reducing the customer's indebtedness. Likewise he is a holder for value of uncleared effects where there is an express or implied agreement for the customer to draw against them before clearance. (See *A. L. Underwood* v. *Bank of Liverpool & Martins, Ltd.*; and v. *Barclays Bank, Ltd.*, under COLLECTING BANKER.) A banker who discounts a bill is a holder for value.

Until value is given no party can sue upon a bill. If, for example, no value is given on a bill till it reaches the hands of a third indorser, none of the parties before that third indorser can sue upon the bill, but the third indorser, because he has given value, can sue all the prior parties. If that third indorser transfers to a fourth person, without any value being given, that person cannot sue the third indorser, seeing he did not give value to the third indorser for the bill, but he can sue all the parties to the bill that the third indorser had the right to sue.

The holder of a bill payable to his order must indorse it. When the holder of a bill payable to bearer (see BEARER) negotiates it by delivery, without indorsing it, he is called a "transferor by delivery" (*q.v.*) and warrants to his immediate transferee that the bill is what it purports to be.

If the title of a holder for value is defective, as where the bill was obtained by fraud, duress, or force and fear, or for an illegal consideration, he cannot recover the amount from the person defrauded or otherwise. But a "holder in due course" can sue any party to the bill. No title, however, can be obtained through a forged signature. (See BILL OF EXCHANGE, CHEQUE, CONSIDERATION FOR BILL OF EXCHANGE, HOLDER IN DUE COURSE.)

HOLDER IN DUE COURSE. The Bills of Exchange Act, 1882, Section 29, defines a holder in due course as follows—

"(1) A holder in due course is a holder who has taken a bill, complete and regular on the face of it, under the following conditions, namely—

"(*a*) That he became the holder of it before it was overdue, and without notice that it had been previously dishonoured, if such was the fact:

"(*b*) That he took the bill in good faith and for value, and that at the time the bill was negotiated to him he had no notice of any defect in the title of the person who negotiated it.

"(2) In particular the title of a person who negotiates a bill is defective within the meaning of this Act when he obtained the bill, or the acceptance thereof, by fraud, duress, or force and fear, or other unlawful means, or for an illegal consideration, or when he negotiates it in breach of faith, or under such circumstances as amount to a fraud.

"(3) A holder (whether for value or not) who derives his title to a bill through a holder in due course, and who is not himself a party to any fraud or illegality affecting it,

has all the rights of that holder in due course as regards the acceptor and all parties to the bill prior to that holder."

A bill does not require acceptance to make it "complete and regular on the face of it." (*National Park Bank of New York* v. *Berggren & Co.* (1914), 110 L.T. 907.)

In *R. E. Jones, Ltd.* v. *Waring & Gillow, Ltd.*, [1926] A.C. 670, the House of Lords held that the expression "holder in due course," as defined in Section 29, does not include the original payee of a bill or cheque. Before a person can be a holder in due course, the instrument must have been negotiated to him, and the original delivery of the bill or cheque to the payee is not such a negotiation.

By Section 30—

"(1) Every party whose signature appears on a bill is *prima facie* deemed to have become a party thereto for value.

"(2) Every holder of a bill is *prima facie* deemed to be a holder in due course; but if in an action on a bill it is admitted or proved that the acceptance, issue, or subsequent negotiation of the bill is affected with fraud, duress, or force and fear, or illegality, the burden of proof is shifted, unless and until the holder proves that, subsequent to the alleged fraud or illegality, value has in good faith been given for the bill."

The meaning of "good faith" is given in Section 90—

"A thing is deemed to be done in good faith, within the meaning of this Act, where it is in fact done honestly, whether it is done negligently or not."

If, for example, Jones is the holder in due course, he has the right to sue any party to the bill, but if in an action it is proved that the bill is affected with some taint, as described in the above sections, it will be necessary for Jones, in order to preserve his rights, to show that he gave value for the bill subsequent to the alleged taint, and that he took it in good faith without knowledge of anything being wrong with the bill.

If Jones, the holder in due course, transfers the bill to Brown, but without any value being given therefor, Brown obtains the same rights that Jones had and can sue any party prior to Jones, but he cannot sue Jones because of the absence of consideration.

"No consideration" is a good defence between parties closely related on a bill, but a holder in due course is not affected by the fact of there having been "no consideration" between any parties before it was transferred to him for value.

Section 38 deals with the rights of a holder—

"The rights and powers of the holder of a bill are as follows—

"(1) He may sue on the bill in his own name:

"(2) Where he is a holder in due course, he holds the bill free from any defect of title of prior parties, as well as from mere personal defences available to prior parties among themselves, and may enforce payment against all parties liable on the bill:

"(3) Where his title is defective (*a*) if he negotiates the bill to a holder in due course, that holder obtains a good and complete title to the bill, and (*b*) if he obtains payment of the bill the person who pays him in due course gets a valid discharge for the bill."

Where a signature on a bill is forged, no one can obtain any right to the bill through or under that signature. (See BILL OF EXCHANGE, FORGERY, HOLDER FOR VALUE.)

HOLDER OF BILL OF EXCHANGE. The holder of a bill is the person who is in possession of it and may be either the payee, or an indorser, or the bearer. (Bills of Exchange Act, 1882, Section 2.)

There are three kinds of holder, a simple holder of a bill, a holder for value, and a holder in due course.

If the holder of a bill has not given value for it, he cannot sue any party subsequent to the last indorsement when value was given.

The holder of a bill, unless it is indorsed payable to him, need not indorse it, though, as a rule, any person taking a bill would require the person from whom he takes it to indorse it. The person receiving a bill has the right to demand the indorsement of the transferor if the bill was payable to his order.

If a bill is payable to the holder's order, he must indorse it, whether the transferee demands his indorsement or not.

Where the holder of a bill payable to bearer (see BEARER) negotiates it by delivery, without indorsing it, he is called a

"transferor by delivery" (*q.v.*) and warrants to his immediate transferee that the bill is what it purports to be.

No one can be a holder, holder for value, or holder in due course whose title has to be made through a forged signature.

Any holder may convert a blank indorsement into a special indorsement by writing above the indorser's signature a direction to pay the bill to the order of himself or some other person.

A holder may strike out any indorsement on a bill, and the person whose signature is struck out is thereby released from liability, and so are all subsequent indorsers. A banker usually cancels his indorsement on a dishonoured bill.

If a holder receives payment of a bill from an indorser, the bill must be given up to that indorser, who will then have all the rights of the holder from whom he received it. (See PAYMENT FOR HONOUR.)

A banker is under no liability on a cheque or bill to a holder, unless he has in some way given the holder to understand that the cheque or bill will be paid. (See BILL OF EXCHANGE, HOLDER FOR VALUE, HOLDER IN DUE COURSE, TRANSFEROR BY DELIVERY.)

HOLDING OUT. By words or conduct giving rise to the idea that definite relations exist such as those of agency or partnership. It is a special application of the principle of estoppel. In the Partnership Act, 1890, Section 14, it is enacted that everyone who by words spoken or written, or by conduct represents himself, or who knowingly suffers himself to be represented, as a partner in a particular firm is liable as a partner to anyone who has on the faith of any such representation given credit to the firm. (See PARTNERSHIPS.)

HOLIDAYS EXTENSION ACT, 1875. (See BANK HOLIDAYS.)

HOLOGRAPH. A document which is entirely, or almost entirely, written by the person who signs it. A holograph cheque is less likely to be a forgery than if it is merely signed by the drawer.

In Scotland, when a surety signs a printed form of guarantee, he sometimes writes above his signature "adopted as holograph." (See ATTESTATION.)

HOME SAFE. A small metal box with separate compartments for coins of various denominations and for notes. These home safes can be obtained from a bank by anyone opening a Home Safe Deposit Account, with a small initial deposit. The key is retained by the bank and the contents are credited to the holder's account from time to time as the safe is brought into the bank to be emptied. Pass books are issued and furnish a record of the transactions affecting the account, and the books must be presented whenever money is paid in or withdrawn.

Home Safe Accounts are intended for small savings only and usually there is a limit on what new money may be deposited in any one year (e.g. £500). Interest is allowed at 2½ per cent up to a maximum balance of £100 and at 1¼ per cent on sums in excess thereof.

HOT TREASURY BILLS. A name given to Treasury Bills allotted on the last tender date.

HOTCHPOT. In law, the gathering together of property for the purpose of making an equal division.

HOUSE. The word is used with reference to the Bankers' Clearing House, the Stock Exchange, or a large London Bank Office, as the case may be.

HOUSE BILL. A bill drawn by a company or firm upon itself, as between different branches. (See PIG UPON BACON.)

HOUSEHOLDER'S PROTEST. Where the services of a notary cannot be obtained at the place where a bill is dishonoured, any householder or substantial resident may, in the presence of two witnesses, give a certificate attesting the dishonour of the bill, and the certificate shall in all respects operate as if it were a formal protest of the bill. (Section 94, Bills of Exchange Act, 1882.) (See also PROTEST.)

HOUSING ACT, 1936. The purpose of this Act is to abate and prevent overcrowding in dwelling-houses and to provide for the redevelopment of urban areas in connection with housing accommodation. It is provided that a local authority may compulsorily acquire land for redevelopment purposes. Compensation paid for property so acquired is, by the Act, assessed in accordance with the Act of 1930. Hence small weekly properties in a congested area may prove to be a deceptive form of security if valued on a rental basis, for little more than the site value may be awarded as compensation if the property is acquired under the above Act.

HOUSING ACT, 1949. This statute amended the Housing Act of 1936, by making the latter's provisions available for the benefit of all classes of the community and not merely for what was described in the Act as the "working classes." The new Act also authorises Exchequer grants towards

the improving of housing accommodation and the provision of other amenities.

HUSBAND (SHIP). (See SHIP'S HUSBAND.)

HYPOTHECATION. In maritime law the term refers to the charging of a ship or its cargo or its freight as security for a debt without possession or ownership thereof passing to the creditor.

In banking matters the term is sometimes used to denote an agreement to give a charge over goods or documents of title thereto without conferring possession, but undertaking to give a pledge when the goods or documents are to hand.

A letter of hypothecation, however, is strictly synonymous with a trust letter. (See LETTER OF HYPOTHECATION, TRUST LETTER.)

ILLEGAL CONSIDERATION. (See CONSIDERATION.)

IMMEDIATE ANNUITY. An immediate annuity is payable commencing with a payment six months after the purchase is completed and terminating at death.

For example, at the age of fifty-five (male) £100 may purchase an immediate annuity of £6. (See ANNUITY.)

IMMEDIATE PARTIES. The "immediate parties" to a bill of exchange are those in close relationship, as the drawer and acceptor, the drawer and payee, and an indorser and the immediately preceding and subsequent indorsers. (See PARTIES TO BILL OF EXCHANGE.)

IMPEACHMENT OF WASTE. A law term, meaning liability for waste or injury to a property.

Under the Settled Land Act, 1925, a tenant for life may, without impeachment of waste by any remainderman or reversioner, execute any improvement authorised by this Act, and for the purposes thereof use, on the settled land, works proper for the improvements and repairs, get and work limestone, etc., and cut down and use timber and other trees not planted for shelter or ornament. (Section 89.)

IMPERSONAL ACCOUNTS. Accounts which are not connected with persons, e.g. expenses, interest, discount, Head Office account, bills, shares, rent, premises.

As to accounts which are opened by customers with headings such as "Church Fund," "Cricket Club," etc., see the remarks under SOCIETIES.

IMPERSONAL LEDGER. (See GENERAL LEDGER.)

IMPERSONAL PAYEES. Cheques payable to "Cash or order," "Wages or order," etc., are not payable to bearer under the Bills of Exchange Act, 1882, Section 7, s.s. 3, as they are payable to impersonal payees. In some cases such cheques are payable on the drawer's indorsement. They are not bills of exchange, however. In *North and South Insurance Corporation, Ltd.* v. *National Provincial Bank, Ltd.* (*The Times*, 7th November, 1935), it was held that an instrument payable to "Cash or order" was not a cheque, for it did not conform to the definition of a bill, in that "cash" was not a specified person. The document merely directed the payment of cash to some impersonal account which could not indorse, and the printed words "or order" were overriden by the written word "Cash." The document was thus a good direction to pay money to bearer and the bank was not held liable. In this case, however, the money had reached the party whom the drawer intended, and the judgment was influenced by this fact. It is doubtful as to what would happen if the money got into wrong hands. Hence, a paying banker would probably be justified in returning a document drawn in such terms as an irregular document if he was not satisfied that it had reached the proper party.

IMPLEMENT. In Scotland, to implement a contract is to carry it into effect.

IMPORT SPECIE POINT. (See SPECIE POINTS.)

IMPRESSED STAMPS. Impressed stamps are required on—

Assignments of Life Policies.
Conveyances.
Inland Bills of Exchange (except when on demand, at sight, on presentation, or not exceeding three days after date or sight, when either an adhesive or impressed stamp may be used).
Inland Promissory Notes.
Memoranda of Deposit of Deeds.
Mortgages.
Policies of Life Insurance.
Policies of Sea Insurance.
Transfers.

Stamps may be impressed on all instruments except where an adhesive appropriated stamp is necessary. (See APPROPRIATED STAMPS.) In certain cases (e.g. a guarantee under hand, and a memorandum of deposit of marketable securities) either an impressed or adhesive stamp may be used. (See ADHESIVE STAMPS.)

IMPROVED GROUND RENTS. (See GROUND RENTS.)

IN CASE OF NEED. A referee "in case of need" is the person whose name a drawer or any indorser may insert in a bill, to whom a holder may resort in case the bill is dishonoured, by non-acceptance or by non-payment. (Bills of Exchange Act, 1882, Section 15.) The words are usually placed in the left-hand bottom corner of the bill, as "In case of need with the English Bank, Ltd., London." A holder may please himself whether, or not, he resorts to the referee.

Where a dishonoured bill contains a reference in case of need, it must be protested for non-payment before it is presented for payment to the referee in case of need (Section 67, Bills of Exchange Act, 1882). (See ACCEPTANCE FOR HONOUR, REFEREE IN CASE OF NEED.)

INCHOATE INSTRUMENT. An incomplete document, as, for example, a stamped bill form, signed by a person and handed to another person to fill up and make into a complete bill.

By Section 20 of the Bills of Exchange Act, 1882—

"(1) Where a simple signature on a blank stamped paper is delivered by the signer in order that it may be converted into a bill, it operates as a *prima facie* authority to fill it up as a complete bill for any amount the stamp will cover, using the signature for that of the drawer or the acceptor, or an indorser; and, in like manner, when a bill is wanting in any material particular the person in possession of it has a *prima facie* authority to fill up the omission in any way he thinks fit.

"(2) In order that any such instrument when completed may be enforceable against any person who became a party thereto prior to its completion, it must be filled up within a reasonable time, and strictly in accordance with the authority given. Reasonable time for this purpose is a question of fact.

Provided that if any such instrument after completion is negotiated to a holder in due course it shall be valid and effectual for all purposes in his hands, and he may enforce it as if it had been filled up within a reasonable time and strictly in accordance with the authority given."

It is important to note that an incomplete bill must be filled up strictly in accordance with the authority given. If a person signs a stamped form as an acceptor and hands it to another person to fill up in a certain specified manner and sign it as drawer, and the drawer exceeds his authority, the acceptor will not be liable thereon to the drawer, but if the bill is negotiated to a holder in due course, he will be liable to such a holder. By accepting a bill in blank an acceptor may thus find himself in the awkward position of having to pay a very much larger sum than he intended to pay when he placed his name on the paper.

The Court of Appeal said in *France* v. *Clark* (1884), 26 Ch.D. 257: "The person who has signed a negotiable instrument in blank or with blank spaces is, on account of the negotiable character of that instrument, estopped by the law merchant from disputing any alteration made in the document after it has left his hands by filling up blanks (or otherwise in a way not *ex facie* fraudulent) as against a *bona fide* holder for value without notice, but it has been repeatedly explained that this estoppel is in favour only of such a *bona fide* holder, and a man who, after taking it in blank, has himself filled up the blanks in his own favour without the consent or knowledge of the person to be bound, has never been treated in English Courts as entitled to the benefit of that doctrine." (See BILL OF EXCHANGE.)

If a customer draws a cheque with blank spaces, so that it is put into the power of a dishonest person to increase the amount by forgery, the customer must bear the loss as between himself and the banker. (See *London Joint Stock Bank, Ltd.* v. *Macmillan and Arthur*, under ALTERATIONS.)

INCOME DEBENTURE. A debenture which provides that the principal or interest, or both, shall be payable only out of the profits of the company. (See DEBENTURE.)

INCOME TAX. Income tax is assessed and collected in accordance with the provisions of the Income Tax Act, 1952, as amended by subsequent Finance Acts.

The income tax year commences on the 6th April.

PERSONS LIABLE. Broadly speaking, all persons (including companies) permanently resident in the United Kingdom are liable to income tax in respect of all income whether arising from sources in the United Kingdom or abroad, whilst persons resident abroad are liable only on income arising from sources in the United Kingdom. (See below under "Residence Abroad.")

RATES AND RELIEFS. The standard rate of income tax is determined annually by the Finance Act, which implements the Budget.

Individuals resident in the United Kingdom are entitled to certain allowances and reliefs which may vary year by year.

Relief from the tax payable may be claimed in respect of premiums paid for insurance of claimant's own life or that of his wife and for deferred annuities, etc. The rates of relief vary according to the taxpayer's total income and the date the policy was effected, whilst the amount on which relief is allowed is subject to certain limitations.

Persons resident abroad, unless they fall within special classes (see below under

"Residence Abroad"), are not entitled to any of the allowances enumerated above.

Companies are chargeable at the full standard rate of tax on their net profits, subject to any of the "Sundry Reliefs"(see below) which they may be entitled to claim.

DIVISION OF INCOME. For purposes of assessment, income is divided into five Schedules—

Schedule "A." Income from the ownership of lands, houses, etc.

Schedule "B." Income from the occupation of lands (farming, etc.).

Schedule "C." Income paid under deduction of tax at the source out of public revenue.

Schedule "D." Income from trades, professions, and vocations; interest and sundry items of income not falling under other Schedules; income from foreign and dominion securities and possessions.

Schedule "E." Income from employments.

BASIS OF ASSESSMENT. Assessments under Schedule "A" are based on the annual value of the property and a statutory allowance to cover repairs and maintenance of the property is deducted to arrive at the figure on which tax is chargeable.

Assessments under Schedule "B" are based on the full annual value of the land, etc.

Income falling under Schedule "D" which has not suffered tax by deduction at source and under Schedule "E" is normally assessable on the income of the year preceding the year of assessment. There are special bases prescribed for the first and last years of a business, profession, or employment and for the years in which other sources of income commence and cease.

ASSESSMENT AND COLLECTION OF THE TAX. Returns are required (usually annually) from persons in receipt of income chargeable to tax in their hands whether such persons are the ultimate owners of the income or not.

As a general rule, tax is assessed and collected at the source, wherever possible, before the income reaches the person to whom it belongs. Where tax is collected at source, the payer of the income has the right to deduct tax (normally at the standard rate) from the payments made to the ultimate owner. For example—

(*a*) Tax under Schedule "A" is normally collected from the occupier of the property who, if a tenant, may deduct it from the rent paid.

(*b*) Companies are assessed to tax on the whole of their profits and, when paying dividends, are entitled to deduct tax appropriate thereto.

(*c*) Tax on interest and dividends falling under Schedule "C" and on interest and dividends from foreign and dominion companies paid through agents in the United Kingdom is assessed on the agents who retain the tax in making the payments.

(*d*) Ground rent, mortgage interest, and other annual interest payments are similarly subject to deduction at source. Bank interest is not, as a general rule, regarded as annual interest and is, therefore, paid in full.

An individual on making a Return on his own behalf declares the whole of his income whether taxed at source or not and, if tax has been overpaid or over-deducted, the excess may be reclaimed.

The income of a married woman is included with that of her husband unless "Separate Assessment" is claimed, in which case the allowances will be apportioned between the parties according to their respective incomes.

The tax is normally payable on the 1st January for the year ending the following 5th April or, in the case of earned income, in two instalments on the 1st January and 1st July.

Appeals against assessments may be made to the General Commissioners (a local body) or the Special Commissioners of Income Tax. On a point of law the case may be taken to the High Court, thence to the Court of Appeal, and finally the House of Lords.

Normally, six years is the time limit for making assessments or claiming repayment of tax.

Penalties are prescribed for failure to make Returns or for false Returns.

RESIDENCE ABROAD. There is no definition in the Income Tax Acts of the terms "residence" and "ordinarily"; as a general rule, they are to be given their everyday meaning. "Residence" must not be confused with "domicile," which also has a bearing on income tax liability. Each case is determined on its particular facts but, broadly speaking, an individual is regarded as resident in the United Kingdom—

(1) if he is a British subject and usually resides in the United Kingdom; temporary absence abroad, unless

extending to the whole of the year of assessment, does not entitle him to be regarded as a non-resident;

or whether or not he is a British Subject—

(2) if he maintains a place of residence in the United Kingdom and is in the country at any time during the year of assessment;

(3) if he visits the United Kingdom for a period or periods amounting to six months or 183 days in the year of assessment;

(4) if he visits the United Kingdom habitually and his average annual visits amount to three months.

Individuals falling within (1), (2), and (4) might be regarded as both resident and ordinarily resident in the United Kingdom.

The residence of a company is, generally speaking, determined by the place where the control of the company is exercised and not where the company is incorporated or its trading operations are carried out.

A person held to be resident abroad for any year is entitled to claim exemption from income tax on all income of that year from foreign and dominion sources.

A person held to be ordinarily resident abroad may claim exemption from tax on interest from 3½ per cent War Loan, 4 per cent Victory Bonds, and 4 per cent Funding Loan.

If a person resident abroad falls within certain specified classes (e.g. British subjects, Crown servants, etc.), he is entitled to a measure of relief from tax on income from United Kingdom sources—apart from any claim to exemption he may have in respect of the three aforementioned British Government securities—otherwise he is liable at the full standard rate on such income.

A person resident in the United Kingdom, but ordinarily resident abroad, is liable on "remittances" of income from foreign and dominion sources and not on the whole income arising abroad.

A person resident and ordinarily resident in the United Kingdom but *domiciled* abroad also escapes tax on foreign and dominion income not remitted or brought into the United Kingdom.

SUNDRY RELIEFS. (Applicable to companies or individuals.)

(*a*) *Dominion Income Tax Relief.* Any person who is liable to pay both United Kingdom income tax and Dominion income tax on the same part of his income is entitled to claim a measure of relief from United Kingdom tax.

Special provisions apply to income from Eire. Persons resident in the United Kingdom and not also resident in Eire are exempt from Irish tax. Conversely, persons resident in Eire and not also resident in the United Kingdom are exempt from United Kingdom tax. Persons resident in both countries can claim a measure of relief from both countries.

(*b*) *Bank Interest, etc.* Relief from tax may be claimed in respect of interest payable in the United Kingdom to a bank, stockbroker, or discount house if paid in full out of taxed income. That part of a liability settled under a guarantee which comprises interest due from the principal debtor, is not regarded as bank interest entitling the guarantor to relief. (*Holder* v. *Inland Revenue Commissioners*, [1932] A.C. 624.) But where a guarantor in consideration of being given time to discharge his liability, pays interest on the sum involved which is left in the principal debtor's name it is customary to grant him relief.

(*c*) *Business Loss Claim.* Where a loss has been sustained in a business (including farming), profession, etc., relief may be claimed by way of set-off against income of the year in which the loss is sustained or by carry forward against future profits, according to the circumstances.

(*d*) *Property Maintenance Claim.* Where the cost of repairs and maintenance (taken on a five years average) exceeds the statutory allowance, a claim may be made. Where the property is newly acquired, by concession the actual expenditure of the year will be taken as a basis for the first five years.

SUR-TAX. Individuals whose total statutory income in any year is in excess of £2,000 are liable for additional tax—known as sur-tax. The sur-tax is on a graduated scale and the rates are determined each year.

Individuals resident abroad are liable to sur-tax if their total income liable to United Kingdom tax is in excess of £2,000.

Normally, companies are not liable for sur-tax but special provisions apply to certain cases, particularly where the company has been formed with the object of avoidance by its members of payment of sur-tax.

INCOMPLETE BILL. (See INCHOATE INSTRUMENT.)

INCONVERTIBLE PAPER CURRENCY. A bank note which cannot be exchanged for gold on demand, at the bank which issued it, for the full value as shown upon the face

of the note is called inconvertible paper. When it can be exchanged for its full value, it is convertible paper.

INCORPORATED COMPANY. A company is incorporated when it is registered in accordance with the requirements of the Companies Acts, and has obtained a certificate of incorporation from the Registrar of Companies. The members of an incorporated company no longer exist as individuals liable to be sued by creditors; the individuals have become one body (the company) and it is to the company alone (or the liquidator) that the members are liable. Creditors must sue an incorporated company in the company's name. There are also companies incorporated by Royal Charter, and companies incorporated by Special Acts of Parliament. (See COMPANIES.)

INCORPOREAL HEREDITAMENT. A right over land in the possession of another, such as a future right to possession, or a right to use for a special purpose, such as a right of way.

INCREMENT VALUE DUTY. A duty imposed by the Finance (1909-10) Act, 1910, upon the increment value of any land, at the rate of one pound for every complete five pounds of that value accruing after 30th April, 1909

Increment Value Duty was repealed by the Finance Act, 1920.

INCUMBRANCE A liability, such as a mortgage, upon an estate or property. (See MORTGAGE.) A property is unincumbered when it is free from any charge.

INDEMNITY. An undertaking to hold harmless; usually a promise to make a monetary compensation for loss sustained.

Fire insurance and marine insurance are contracts of indemnity.

An indemnity must be distinguished from a guarantee; the former need not be in writing, the latter must; an indemnity is a primary liability, whilst a guarantee is a collateral liability. An indemnity under hand attracts stamp duty of 6d. (impressed or adhesive) as an agreement under hand, if for £5 or over (except when "all damages, etc." is mentioned); if under seal, it requires a 10s. impressed stamp, unless there is a covenant to pay a definite sum, when there is an *ad valorem* duty of 5s. per cent. Bankers take indemnities in respect of lost drafts and deposit receipts, and are frequently asked to give indemnities on behalf of customers in respect of lost share certificates, dividend warrants and bank notes, and missing bills of lading. In such cases counter indemnities are usually taken from the customers.

INDENTURE. (Latin *In*, and *dens*, a tooth.) A deed to which there are two parties or sets of parties.

Its name dates from the time when a deed was indented along one of the margins. It was the custom to write a deed in two parts on the one parchment, and between each part a blank space was left; along the blank space a word, often the word "chirographum," was written and the parchment was then cut into two by dividing it with an indented or wavy line through that word. Each of the two parties to the deed received a part, and when at any time the two parts were brought together again it showed that they were the correct documents when the indents agreed and the divided word was completed. (See CHIROGRAPH.)

The writing of the word "chirographum" or other words or letters in the blank space was in later times omitted, and the parchment was merely divided with an indented line. Finally an Act was passed (8 & 9 Vict. c. 106, Section 5) providing "that a deed executed after the first day October, 1845, purporting to be an indenture, shall have the effect of an indenture although not actually indented."

The date of an indenture is at the commencement of the deed.

An indenture begins as follows—

"This indenture made the day of 19 , between John Brown of King Street in the City of York, grocer, of the first part and John Jones," etc.

The Law of Property Act, 1925, provides that "a deed between parties, to effect its objects, has the effect of an indenture though not indented or expressed to be an indenture." (Section 56 (2).)

Instead of starting a deed with the words "This indenture," the words "This Conveyance," "This Deed," "This Legal Charge," etc., are now used according to the nature of the transaction. (Section 57.) (See DEED POLL.)

INDORSATION. The word often used in Scotland for indorsement (*q.v.*) or endorsement.

INDORSE. To indorse is to write one's signature upon the back of a document, e.g. a bill, cheque, bill of lading, etc. (See INDORSEMENT.)

INDORSED BACK. As to a bill which is negotiated back to a party already liable thereon, see Section 37 of the Bills of Exchange Act, 1882, under NEGOTIATION OF BILL OF EXCHANGE.

INDORSEE. The person to whom a bill or cheque is assigned by way of indorsement. (See INDORSEMENT.)

INDORSEMENT. (Latin *In dorsum*, on the back.) A writing upon the back of a document. Spelled also "endorsement." In Scotland the word used is often "indorsation."

The indorsement of a bill (or cheque) is the writing, signed by the holder, upon the back, by which a bill (or cheque) payable to order is transferred from one person to another. The simple signature of an indorser is a valid indorsement, and it is not invalid by reason of its being written in pencil. "It was held as long ago as 1826 that a pencil indorsement was valid and effective." (MacKinnon, J., in *Importers Company, Ltd.* v. *Westminster Bank, Ltd.* (1927), 43 T.L.R. 325.)

"Indorsement" means an indorsement completed by delivery.

It is possible for a signature to be placed upon the back of a cheque and yet not operate as an indorsement. Mr. Justice Byles said in *Keene* v. *Beard* (1860), 8 C.B.N.S. 372: "It is true that a man's name may, and very often is, written on the back of a cheque without any idea of rendering himself liable as an indorser. Indeed one of the best receipts is the placing on the back of the instrument the name of the person who has received payment of it. Such an entry of the name on the instrument is not an indorsement."

The requisites of a valid indorsement are given in Section 32 of the Bills of Exchange Act, 1882—

"An indorsement in order to operate as a negotiation must comply with the following conditions, namely—

"(1) It must be written on the bill itself and be signed by the indorser. The simple signature of the indorser on the bill without additional words, is sufficient. An indorsement written on an allonge, or on a 'copy' of a bill issued or negotiated in a country where 'copies' are recognised, is deemed to be written on the bill itself.

"(2) It must be an indorsement of the entire bill. A partial indorsement, that is to say, an indorsement which purports to transfer to the indorsee a part only of the amount payable, or which purports to transfer the bill to two or more indorsees severally, does not operate as a negotiation of the bill.

"(3) Where a bill is payable to the order of two or more payees or indorsees who are not partners all must indorse, unless the one indorsing has authority to indorse for the others.

"(4) Where, in a bill payable to order, the payee or indorsee is wrongly designated, or his name is misspelt, he may indorse the bill as therein described, adding, if he think fit, his proper signature.

"(5) Where there are two or more indorsements on a bill, each indorsement is deemed to have been made in the order in which it appears on the bill, until the contrary is proved.

"(6) An indorsement may be made in blank or special. It may also contain terms making it restrictive."

There are four kinds of indorsement, a conditional indorsement, an indorsement in blank, a special indorsement, and a restrictive indorsement.

A conditional indorsement is referred to in Section 33—

"Where a bill purports to be indorsed conditionally the condition may be disregarded by the payer, and payment to the indorsee is valid whether the condition has been fulfilled or not." The condition would be operative as between the indorser and the indorsee. (See CONDITIONAL INDORSEMENT.)

An indorsement in blank and a special indorsement are explained in Section 34—

"(1) An indorsement in blank specifies no indorsee, and a bill so indorsed becomes payable to bearer.

"(2) A special indorsement specifies the person to whom, or to whose order, the bill is to be payable.

"(3) The provisions of this Act relating to a payee apply with the necessary modifications to an indorsee under a special indorsement.

"(4) When a bill has been indorsed in blank, any holder may convert the blank indorsement into a special indorsement by writing above the indorser's signature a direction to pay the bill to or to the order of himself or some other person."

A restrictive indorsement is defined in Section 35—

"(1) An indorsement is restrictive which prohibits the further negotiation of the bill or which expresses that it is a mere authority to deal with the bill as thereby directed and not a transfer of the ownership thereof, as, for example, if a bill be indorsed

'Pay D only,' or 'Pay D for the account of X,' or 'Pay D or order for collection.'

"(2) A restrictive indorsement gives the indorsee the right to receive payment of the bill and to sue any party thereto that his indorser could have sued, but gives him no power to transfer his rights as indorsee unless it expressly authorise him to do so.

"(3) Where a restrictive indorsement authorises further transfer, all subsequent indorsees take the bill with the same rights and subject to the same liabilities as the first indorsee under the restrictive indorsement."

"*Für mich*" (instead of me) in an indorsement is not restrictive.

No person is liable as indorser who has not signed the instrument as such (Section 23).

The liability of an indorser is defined by Section 55 (2). (See under INDORSER.)

An indorser may insert an express stipulation (1) negativing or limiting his own liability to the holder, (2) waiving as regards himself some or all of the holder's duties (Section 16). An example of an indorsement so qualified is where an indorser adds after his signature the words "without recourse" or the French equivalent "*sans recours*." This stipulation releases the indorser from liability in the event of the cheque being dishonoured, but does not release him from liability with respect to any forgery on the cheque before he indorsed it.

By Section 31 (3)—"A bill payable to order is negotiated by the indorsement of the holder completed by delivery."

A transferee, for value, acquires the right to have the indorsement of the transferor, where the bill was payable to the transferor's order (Section 31 (4).)

A bill payable to "John Brown or order" may be indorsed simply "John Brown." He may then transfer the bill by simple delivery to another person. By John Brown's indorsement in blank the bill becomes payable to bearer, and may pass from hand to hand without any further indorsement, though, as a rule, any one taking a bill will require the transferor to indorse it, so that he may thereby become a party to the bill and be liable thereon. If, however, John Brown indorsed the bill "Pay John Jones or order, John Brown" (or "John Brown, pay to the order of John Jones"), the bill is specially indorsed, and requires the signature of John Jones before he can transfer it to anyone else. Any holder may convert an indorsement in blank into a special one to himself, or to any other person. If a bill with John Brown's indorsement in blank passes through the hands of certain holders who do not indorse it, and then comes into the possession of William Robinson, he may write above John Brown's signature the words "Pay William Robinson." Before further negotiation, the bill requires William Robinson's indorsement. If John Brown indorses the bill "Pay John Jones only," the indorsement of John Jones is required, but John Jones cannot transfer the bill to anyone else, as John Brown by his restrictive word prohibits the further negotiation of the bill. Payment must be made only to John Jones himself. If presented through another bank, the indorsement should be confirmed.

A cheque or bill payable "to order" should (unless payable to a fictitious or non-existing person) be indorsed. But see under PAYEE as to the case of a payee refusing to indorse a cheque when presented by himself. A cheque payable to bearer does not require to be indorsed. A cheque indorsed in blank is payable without further indorsement.

An indorsement, as the name implies, should be upon the back of a bill or cheque, but it has been held that an indorsement on the face is valid.

An indorsement should be spelled exactly in the same way as the person's name appears on the face of the bill (or cheque) as payee, or in the special indorsement as indorsee. If the person's name has been misspelt by the drawer or the prior indorser, his indorsement should also be misspelt, but he may indorse it below with his name spelled correctly. All indorsements must be examined, even if they are in a foreign language.

In a memorandum dated June, 1910, circulated by the Council of the Institute of Bankers, with respect to indorsements in Oriental or other unusual characters, it is pointed out that bills bearing indorsements in Oriental characters are sometimes presented for payment with the name of the indorser written in Latin characters beneath the indorsement, and the memorandum continues: "Such 'translations' may be, and it is believed often are, written on the bill by persons having no authority and incurring no responsibility, and the Council is of opinion that before paying the bill, a banker would be justified in requiring that the translation be properly verified by a notary,

or that, in default of this, the indorsement be confirmed by a banker.

"In the event of bills bearing Oriental indorsements being returned, the answer given should be such as to leave no room for doubt that the reason for refusing payment is that such indorsement is unintelligible, in which case the Council is advised that no legal liability will be incurred by the bank giving the answer.

"A suggested form of answer is ' . . .th indorsement requires notarially certified translation, or will pay on banker's confirmation.'

"The Council think it would be most satisfactory for all concerned, and avoid delay in payment of bills bearing such indorsements, if they were in all cases put in order before being remitted to London for payment, as it is sometimes a matter of difficulty in this country to obtain a satisfactory translation."

If a holder strikes out, intentionally, the indorsement of any indorser, that indorser and all indorsers subsequent to him are discharged from liability on the bill. (Section 63 (2), see under CANCELLATION OF BILL OF EXCHANGE.)

Where a bill is negotiated back to a prior indorser, he is not entitled to enforce payment of the bill against any intervening party to whom he was previously liable. (See Section 37 under NEGOTIATION OF BILL OF EXCHANGE.)

An infant may indorse a bill or cheque and pass on to an indorsee a good title, but he is under no liability with regard to it. Section 22 (2), provides that where a bill is indorsed by an infant or corporation having no capacity or power to incur liability on a bill, the indorsement entitles the holder to receive payment of the bill, and to enforce it against any other party thereto.

Where the signature of any person is required, under the Bills of Exchange Act, it is not necessary that he should sign it with his own hand. It is sufficient if his signature is written thereon by some other person by or under his authority (Section 91). A banker, however, would require undoubted evidence of authority before accepting an indorsement written by some other person. If an indorsement is impressed by a stamp, a banker should confirm it, when he is satisfied that it has been made by a duly authorised person.

In the case of a corporation, an indorsement sealed with the corporate seal is sufficient (Section 91 (2)).

Where a banker on whom a cheque is drawn, pays it in good faith and in the ordinary course of business, the banker is protected by Section 60 (see PAYMENT OF BILL), even though the indorsement of the payee or a subsequent indorser has been forged or made without authority. He must, however, exercise reasonable care, and see that the cheque he is asked to pay is apparently properly indorsed. If he is negligent and pays a cheque which is clearly not indorsed by the proper party he will be liable. The banker need not know the payee, so long as the cheque purports to be indorsed by the person to whom it is payable.

A cheque drawn in the form "Pay A B per X" should be indorsed "A B per X." In *Slingsby and Others* v. *The District Bank, Ltd.* (*The Times*, 16th July, 1931), Wright, J., in the course of his judgment said (referring to a cheque in the above form): "It seems clear that if X has no right to receive the money except in a representative capacity, his signature should show that he is acting in accordance with that, and he ought to sign in a representative capacity: he is not authorised to receive the money as his own, or to deal with it except for his principals. That is the intention."

If a banker pays a customer's acceptance to a person appearing to be the holder, but claiming through or under a forged indorsement, he cannot charge such an acceptance to the customer's account (Sections 24 and 59. See FORGERY). If he has paid such an acceptance to a banker who sent it for collection he cannot claim the amount back from that banker.

The paying banker thus incurs liability in paying a bill under a forged indorsement, but in paying a cheque with a forged indorsement he is protected.

With regard to a banker's liability as to the indorsements on a bill, Baron Parke (in *Robarts* v. *Tucker* (1851), 16 Q.B. 560) said: "If bankers wish to avoid the responsibility of deciding on the genuineness of indorsements, they may require their customers to domicile their bills at their own offices, and to honour them by giving a cheque upon the banker."

The banker who collects for a customer an open cheque is responsible for the genuineness of the indorsement, but in the case of a cheque crossed generally, or specially to himself, he is not liable for a forged indorsement, provided he receives payment of the cheque for his customer in good faith and without negligence. (See CROSSED CHEQUE.)

A collecting banker should see that the indorsements of all order cheques received for collection are correct. If he fails to observe that an indorsement does not agree with the name of the payee, it is negligence which is sufficient to deprive him of the protection of Section 82 of the Bills of Exchange Act, when collecting a crossed cheque for a customer. (See that Section under CROSSED CHEQUE.)

The banker paying a draft or order drawn upon him, payable to order on demand, which purports to be indorsed by the person to whom the same shall be drawn payable, is not liable if the indorsement proves to have been forged. It shall not be incumbent on such banker to prove that such indorsement, or any subsequent indorsement, was made by or under the direction or authority of the person to whom the said draft or order was or is made payable, either by the drawer or any indorser thereof (Section 19, Stamp Act, 1853, 16 & 17 Vict. c. 59, see DRAFT ON DEMAND). The same Section probably protects a banker in paying an order drawn upon him as treasurer of a local authority. Some writers consider that a banker is also protected, in paying such orders, by Section 60 of the Bills of Exchange Act (see above). This protection, however, depends upon whether the orders are held to be drawn upon a banker, or merely upon the treasurer in his personal capacity. A bill or cheque payable to John Brown without the words "order" or "bearer," is payable to order and requires indorsement.

It is a well-recognised custom to pay a dividend warrant, payable to several persons, when discharged by one of those persons. (See DIVIDEND WARRANT.) As to whether all interest warrants are dividend warrants within the meaning of Section 95, see the case under DIVIDEND WARRANT.

Where a bill has been seized in execution, a sheriff can give a good discharge when payment is made to him.

If an indorser writes any words on the cheque or bill in the form of a receipt, such as "Received Payment," "Received Cash," such receipt requires a twopenny stamp if the amount is £2 or over.

A receipt cannot also serve the purpose of an indorsement.

Where an indorsement is by mark, it must be duly witnessed.

Where a bill drawn by a firm is payable to their order, one partner may draw the bill and, probably, another partner may indorse it. Thus, though the signatures of the firm on the bill differ, it may be in accordance with the practice of the firm to treat bills in that way.

The signature of the name of a firm is equivalent to the signature by the person so signing of the names of all persons liable as partners in that firm. (Section 23 (2).)

Where a person indorses a bill in a trade or assumed name, he is liable thereon as if he had signed it in his own name. (Section 23 (1).)

Where payable to a fictitious or non-existing person no indorsement is required, as the instrument may be treated as payable to "bearer" (Section 7 (3)). (See FICTITIOUS PAYEE.)

Instruments payable to "Cash or order," "Wages or order," etc., are sometimes paid on the indorsement of the drawer. See, however, IMPERSONAL PAYEES.

"Per pro." indorsements are usually accepted by bankers, but some companies put a note upon their cheques to the effect that a "per pro." discharge will not be accepted, unless guaranteed by the payee's banker. A banker is not obliged to accept a per pro. indorsement if there are suspicious circumstances demanding inquiry as to the person's authority to indorse. A per pro. discharge is not accepted on a dividend warrant.

An indorsement which is not strictly in order is frequently confirmed by a banker as "Indorsement confirmed. Per pro. X & Y Bank, Ltd., T. Brown, Manager." This is better than "Indorsement guaranteed," as it precludes any chance of liability to stamp duty as a guarantee. Where a cheque payable to order has been omitted to be indorsed by the payee, a banker occasionally indorses it "Placed to credit of the payee's account. Per pro. X & Y Bank, Ltd., T. Brown, Manager." Though there is no obligation on the banker on whom the cheque is drawn to pay the cheque which is not indorsed, he is usually satisfied with the collecting banker's assurance that it has gone to the payee's credit. Of course, as it is not indorsed, the banker cannot shelter himself under Section 60.

A banker is sometimes authorised by a company to indorse cheques on behalf of the company, and in such a case the indorsement may be, e.g. "Indorsed by authority of the X & Y Water Company and placed to the credit of their account with us. Per pro. The British Bank, Ltd., John Brown, Manager."

Where a person is under obligation to indorse in a representative capacity as

treasurer or executor, he may indorse in such terms as to negative personal liability. (Section 31 (5).)

Section 33 of the Companies Act, 1948, enacts that "a bill of exchange or promissory note shall be deemed to have been made, accepted, or indorsed on behalf of a company if made, accepted, or indorsed in the name of, or by or on behalf or on account of, the company by any person acting under its authority." Although this Section makes an indorsement of simply the name of a joint stock company (if made by a person acting under authority) legally correct, it is the practice of bankers always to require that it be signed by some person on behalf of the company, e.g. "For and on behalf of John Brown & Coy., Ltd., J. Jones, Secretary," or "Per pro. John Brown & Coy., Limited, J. Jones," or "John Brown & Coy., Ltd., J. Jones, Secretary."

Although an indorsement in the last mentioned form is frequently accepted as sufficient, it is very desirable that it should be preceded by the words "per pro." or "for" or "for and on behalf of." In the case of *Elliot* v. *Bax-Ironside* (1925), 41 T.L.R. 631, where an indorsement on a bill was

"Fashions Fair Exhibition, Limited.
H. O. Bax-Ironside
Ronald A. Mason } *Directors.*"

the name of the company having been impressed by a rubber stamp, the Court of Appeal held that there was nothing in the form of the signature on the back of the bill which was conclusive as a matter of law that it was the signature of the company, and that the directors were personally liable. In this case, however, the indorsement was not a discharge of a payee but an indorsement by way of security as the facts showed that it was the intention that the directors should incur personal liability by indorsing the bill. In applying Section 26 (2), of the Bills of Exchange Act, 1882 (see under AGENT), the construction that the signatures on the back of the bill were the personal signatures of the directors was held to be the construction most favourable to the validity of the bill.

Where a cheque payable to John Brown is indorsed "Place to credit of my account, J. Brown," it is not necessary that the cheque should be indorsed by the bank in any way. So long as the cheque is indorsed J. Brown, the paying banker is not concerned with the instruction to the collecting banker.

A bearer cheque does not require indorsement and any indorsements which may have been placed thereon need not be examined. A bearer cheque cannot be turned into one payable to order by indorsement. If a "bearer" cheque is specially indorsed to John Brown or order and is not signed by John Brown, the banker is not concerned with the matter.

In the case of a cheque payable to order which has been indorsed in blank, thus making it payable to bearer, a subsequent holder may again make it payable to order by writing a direction above the last indorsement to pay to the order of a further party.

If an indorsement has been altered, it should, if correct, be confirmed. An indorsement by means of an impressed stamp should be confirmed by a collecting banker.

An indorsement in pencil is not a sufficient reason for returning a cheque, as it is a valid indorsement, but the use of a pencil for such a purpose should always be discouraged.

If the person presenting a cheque is unable to write, he should indorse it by mark, his mark being then witnessed, preferably by an independent party. The witness must know the person whose mark he witnesses, and, in addition to signing as witness, must give his own address.

Words of courtesy should not appear in an indorsement, but indorsements are occasionally met with having Mr. or Esq. added to the name. If the name has been written by the right party, the indorsement is sufficient, but a collecting banker should confirm it.

In the case of cheques which are provided with a form of receipt there is frequently an intimation printed thereon that the signature of the receipt is intended to be also an indorsement of the cheque. (See Sir John Paget's opinion on this point under RECEIPT ON CHEQUE.)

In Scotland, when the payee is a married woman, the cheque is frequently drawn as "Pay Mrs. Mary Young or Campbell," Young being her maiden name and Campbell the married name. The indorsement is accepted, whether signed "Mary Young" or "Mary Campbell."

It is a saving of much time and trouble if a collecting banker confirms all indorsements which he notices are not strictly in order, when he knows that they are all right, before remitting the cheques for collection.

As to the difference in practice between

the prefix "for," "pro," or "per," and the prefix "per pro.," see under PER PRO.

If a payee presents an "order" cheque himself, it is the custom to require him to indorse it, but if he declines to indorse it see PAYEE.

The payee's indorsement need not necessarily be the first signature on the back of the cheque, though, of course, it usually is.

A cheque indorsed in France may be signed with the surname only.

There is no authorised form of indorsement, and in consequence the variations in indorsements are very numerous and often puzzling to decide upon. Below is a list of specimens; in one column are included indorsements which, as a rule, would be passed, either because they are strictly correct or sufficiently accurate to justify their acceptance; in the other column are shown indorsements which are not generally accepted, either because they are quite wrong or so doubtful as to cause the cheques bearing them to be returned "indorsement irregular" or "confirmation of indorsement required." A banker is entitled to ask for confirmation of any indorsement about which he has any doubt.

Where a cheque is intended to be payable, say, to George W. Jones & Coy., Ltd., the following is a method of indorsement to cover any likely form in which the company may have been named as the payee (with the exception of the secretary's signature, the indorsement is put on by a rubber stamp)—

Per pro.
George W. Jones & Coy., Ltd.
George W. Jones & Coy.
George W. Jones.
George Jones.
W. Jones.
George W. Jones, Ltd.
George Jones & Coy., Ltd.
W. Jones & Coy., Ltd.
George Jones & Coy.
George Jones, Ltd.
W. Jones, Ltd.
W. Jones & Coy.
Jones, Ltd.
Jones & Coy.
Jones & Coy., Ltd. R. BROWN, *Secretary*.

(See BILL OF EXCHANGE, DELIVERY OF BILL, INDORSER, NEGOTIATION OF BILL OF EXCHANGE.)

INDORSEMENT CONFIRMED. There are cases of daily occurrence, in most bank offices, where an indorsement is not literally or strictly in order, but which the collecting banker knows to be safe. Before remitting such cheques for collection it is customary for the banker to confirm the irregular indorsement as: "Indorsement confirmed Per pro. The X and Y Bank, Ltd., John Brown, Manager."

The words "Indorsement confirmed" are preferable to "Indorsement guaranteed." The latter expression might be held to be a guarantee requiring a sixpenny stamp.

An indorsement made by a stamp ought, if the banker knows it to have been placed thereon by an authorised person, to be confirmed.

INDORSEMENT GUARANTEED. (See INDORSEMENT CONFIRMED.)

Payee.	Correct or Usually Accepted.	Wrong or Not Usually Accepted.
John Brown. . .	John Brown. J. Brown. per pro. John Brown, J. Jones. p.p. John Brown, J. Jones. per pro. Mr. John Brown, J. Jones. pro (or for) John Brown, J. Jones, Agent. J. Jones, Agent, for (or pro.) John Brown. J. Jones, per pro. John Brown. per pro. John Brown, J. Jones & Coy. John Brown by J. Jones, his Attorney. J. Jones, W. Brown, Executors of the late John Brown. J. Brown, per J. Jones, Agent. J. Brown, without recourse.	J. Brown, p.p. J. Jones John Brown, per J. Jones. (Proof of authority required.) John Brown, pro. J. Jones. John Brown by J. Jones. For John Brown, J. Jones. (Proof of authority required.) For J. Brown & Co., J. Brown J. Brown for Self and Co-Executors of W. Brown. J. Jones, Solicitor to J. Brown. John Brown, J. J. John Browne. John J. Brown. pro. John Brown, J. Jones. (Proof of authority required.) Mary Brown, widow of late John Brown. J. Jones, Agent to J. Brown. For J. Brown, J. Jones, Trustee. (Proof of authority required.)

Payee.	Correct or Usually Accepted.	Wrong or Not Usually Accepted.
John Brown. . .	Received cash, J. Brown. (Receipt stamp required if for £2 or over.)	
J. Brown . . .	J. Brown. John Brown. James Brown.	J. J. Brown.
Dr. John Brown . .	John Brown, M.D. John Brown.	Dr. J. Brown.
Captain John Brown .	J. Brown, Captain. J. Brown.	Capt. J. Brown.
Mr. John Brown . .	John Brown.	Mr. John Brown.
Mr. Brown . . .	J. Brown. J. Brown, Junior. per pro. Mr. Brown. J. Jones.	Brown. Mr. Brown.
Mrs. John Brown . .	Mary Brown, wife of John Brown. Mary Brown, widow of John Brown.	Mary Brown. John Brown.
Mrs. Brown . . .	Mary Brown (Mrs. John Brown). Mary Brown. M. Brown. (Mrs.) Mary Brown.	Mrs. John Brown. Mrs. Brown. Mrs. Mary Brown.
John Brown, Senr. .	John Brown, Senr. John Brown.	
John Brown, Junr. .	John Brown, Junior.	John Brown.
John Brown, Esq. .	John Brown.	John Brown, Esq.
Revd. John Brown .	John Brown. John Brown, Vicar of All Saints', Oldtown. (Rev.) John Brown.	Rev. John Brown.
Mr. & Mrs. Brown. .	John Brown. Mary Brown.	J. & M. Brown.
John Brown per A. Smith	John Brown per A. Smith.	John Brown.
George Brown (a minor)	George Brown.	John Brown, father of George Brown
Misses Brown . .	Jane Brown. Mary Brown.	J. & M. Brown. For Self and Jane Brown, Mary Brown. (Confirmation required.)
John Brown & another .	For Self & another, J. Brown.	J. Brown.
John Brown (now deceased)	For Self & Co-Executors of late John Brown, J. Jones.	John Brown. J. Jones. Mary Brown, widow of John Brown.
	For the Executors of J. Brown, deceased, J. J. Jones, an Executor. John Jones, Executor to the late John Brown.	Jones & Co., Solicitors to the Estate of John Brown, decd.
	J. Jones } Administrators of the late R. Smith } John Brown.	
Mrs. John Brown (now deceased)	J. Jones, Executor of the late Mary Brown, wife of John Brown (or widow of the late John Brown).	
John Brown (who cannot write)	his John ✕ Brown. mark Witness, J. Jones, 13, King St., Leeds.	John Brown, J. Jones. John Brown. ✕
John Brown (Indorsed "Credit my Account, John Brown")	Indorsement by Bank not necessary.	
John Brown (Indorsed "Credit *a/c* J. Jones, John Brown")	Do.	
John Joseph Simpson Brown	J. J. S. Brown.	J. J. Brown.
Mr. Fitz-Brown . .	John Fitz-Brown.	Fitz-Brown.
Brown Brothers . .	Brown Brothers.	J. Brown & Bros. J. Brown. T. Brown. J. & T. Brown.
W. Brown, J. Jones, R. Smith	W. Brown. J. Jones. R. Smith.	Brown, Jones & Smith. For Self, Jones & Smith, W. Brown.
W. Brown & J. Jones .	W. Brown. J. Jones. J. Jones. W. Brown. W. Brown. per pro. J. Jones, W. Brown. (If one is dead, the cheque is payable to the survivor on proof of death of the other.)	Brown & Jones.

Payee.	Correct or Usually Accepted.	Wrong or Not Usually Accepted.
William & Thomas Brown	William Brown. Thomas Brown.	For William Brown & Self, Thomas Brown.
W. or T. Brown . .	(Either may indorse.)	
Messrs. Brown . .	J. & T. Brown.	Brown.
	Brown & Son.	Brown & Coy.
	J. Brown & Sons.	Messrs. Brown.
	per pro. Messrs. Brown, J. Jones.	
	Brown Bros.	
	Brown & Brown.	
	Browns.	
Messrs. J. & T. Brown .	J. & T. Brown.	J. &. T. Brown, per J. Jones.
	per pro. Messrs. J. & T. Brown, J. Jones.	J. & T. Brown, J. Jones.
	John & Thomas Brown.	
	John Brown. Thomas Brown.	
Messrs. W. Brown .	W. Brown, W. Brown.	Messrs. W. Brown.
	W. & W. Brown.	W. Brown.
		W. Brown & Son. (Confirmation required.)
		J. & W. Brown.
Messrs. Browns . .	Browns.	Brown & Coy.
Brown & Co. . .	Brown & Coy.	For Brown & Co., J. Jones.
	per pro. Brown & Co., J. Jones, Manr.	Brown & Co., J. J.
	per pro. Brown & Co., J. Jones.	Brown, Smith & Jones.
	Brown & Co., by J. Jones, Agent.	Jas. Brown & Co.
		per pro. Brown & Co., pro. J. Jones. R. Smith.
Thomas Brown & Coy. .	T. Brown & Coy.	Brown & Co.
T. Brown & Coy. .	Thomas Brown & Coy.	Brown & Co.
Messrs. Brown & Co. .	Brown & Coy.	Messrs. Brown & Co.
	per pro. Messrs. Brown & Co., J. Jones.	
	Brown & Co., John Brown, Partner.	
Messrs. Brown & Jones .	J. Brown. J. Jones.	Jones & Brown.
	Brown & Jones.	
T. Brown & Coy., Ld. .	per pro. T. Brown & Coy., Ltd., J. Jones, Secretary. (An indorsement with the correct title may be added: a limited company's name is fixed.)	per pro. Thomas Brown & Co., Ltd., J. Jones, Secretary. (The correct title of the company.)
Brown & Jones, Ld. .	per pro. Brown & Jones, Ld., J. Smith, Secretary.	Brown & Jones, Ld. per pro. Brown & Jones, Ld., J. Smith, Clerk.
The British Coy., Ld., per John Brown	per pro. The British Co., Ld., John Brown, Secretary.	John Brown.
The British Coy., Ld. .	Indorsed by order of the British Company, Ld., and placed to the credit of their account per pro., the X & Y Bank, Ld., J. Brown, Manager.	per pro. The British Coy., Ld., J. Brown, pro Manager.
	per pro. The British Coy., Ld., J. Brown, Secretary.	J. Brown, Secy., British Coy., Ld.
	per pro. The British Coy., Ld., J. Brown.	per pro. The British Company, J. Brown, Secy.
	pro, or For, The British Coy., Ld., J. Brown, Manager.	The British Coy., Ld. per pro. J. Brown, Secy. (This form is not accepted by bankers.)
	For The British Coy., Ld., J. Brown, Director.	per pro. The British Coy., Ld., per pro. John Brown, Secy. J. Jones.
	The British Coy., Ld., J. Brown, Secretary. (Strictly the indorsement should show that the Secretary signs For, or On behalf of the Company.)	For the British Co., Ltd., J. Brown, Representative.
	The British Coy., Ld., per J. Brown, Secy.	The British Coy., Ld. (But see Section 33, Companies Act, 1948, under COMPANIES.)
	Received in payment of call & passed to credit of payees. per pro. The X & Y Bank, Ld., J. Brown, Manager.	
	For the British Coy., Ld., in Liquidation. J. Brown, J. Jones } Liquidators.	For the British Coy., Ld., in Liquidation. For J. Brown, Liquidator, J. Jones.

Payee.	Correct or Usually Accepted.	Wrong or Not Usually Accepted.
The British Coy., Ld. .	For or on behalf of The British Coy., Ltd., J. Brown, Secy. per pro. The British Coy., Ltd., Brown & Co.	
The British Baking Coy.	per pro. The British Baking Coy., J. Brown, Secretary. per pro. The British Baking Coy., Brown & Jones. For the British Baking Coy., J. Brown, Agent. per pro. The British & Universal Baking Coy. (Formerly the British Baking Co.), J. Brown, Secy. p.p. The British Baking Coy., J. Brown, Proprietor. The British Baking Coy., J. Brown, cashier authorised to sign. The British Baking Coy., J. Brown, Manager. (It is better that Brown should sign per pro., For, or On Behalf of.)	The British Baking Co., p.p. J. Brown, Secy. John Brown, Manager, British Baking Coy. per pro. The Baking Coy., J. Brown, Secy. The British Baking Coy. per pro. The British Baking Co., Ltd., J. Brown, Secy.
The British Shipping Coy., J. Brown & Co., Agents	For the British Shipping Coy., J. Brown & Co., Agents.	The British Shipping Coy., per pro. J. Brown & Co., Agents, J. Jones.
John Brown, Secretary, British Coy., Ld.	John Brown, Secretary, British Coy., Ld.	per pro. J. Brown, Secy., British Co., Ld., J. Jones. John Brown.
The British Banking Co., Ltd.	For the British Banking Co., Ltd., J. Brown, Manager. per pro. The British Banking Co., Ltd., J. Jones, Pro Manager. (Not strictly correct but very common in banks.)	
John Brown, Executor .	John Brown, Executor.	John Brown.
John Brown, Treasurer, Redby Cricket Club	John Brown, Treasurer, Redby Cricket Club.	John Brown.
John Brown, Treasurer, Redby Rural District Council	John Brown, Treasurer, Redby Rural District Council.	John Brown. John Brown, Treasurer.
Redby Urban District Council	For Redby Urban District Council, J. Brown, Treasurer.	(If indorsed by a rate collector, confirmation is desired.)
Official Receiver of J. Brown & Co.	J. Jones, Official Receiver of J. Brown & Co.	per pro. J. Jones, Official Receiver of J. Brown & Co. R. Smith.
The Collector of Customs and Excise	J. Brown, Collector of Customs and Excise.	per pro J. Brown, Collector of Customs and Excise, J. Jones.
Earl of Redby . .	per pro. Earl of Redby, J. Brown.	J. Brown, agent to the Earl of Redby.
Lord Brown . . .	Brown.	
Lady Brown. . .	Mary Brown.	Brown.
The Mayor of Oldtown .	John Jones, Mayor of Oldtown. per pro. The Mayor of Oldtown, John Brown.	Mayor of Oldtown.
The Oldtown Corporation	per pro. The Oldtown Corporation, John Brown, Treasurer.	per pro. The Oldtown Corporation, J. Jones, Rate Collector.
Managers of Redby School	J. Brown, J. Jones } Managers of Redby School. For the Managers of Redby School, J. Brown, Chairman.	J. Jones, Manager. J. Brown. J. Jones.
Redby Vestry . .	per pro. Redby Vestry, J. Brown, Clerk.	J. Brown, clerk to Redby Vestry.
Brown frères . .	Brown Bros. Brown frères.	
Owners of Redby Estate per W. Brown	For Owners of Redby Estate, W. Brown.	W. Brown.
Self or order (drawn by J. Brown)	J. Brown. per pro. J. Brown, J. Jones. (But evidence of authority required.)	

Payee.	Correct or Usually Accepted.	Wrong or Not Usually Accepted.
Self or bearer	No indorsement required.	
Administrators of Wm. Brown (the same remarks apply as in the case of executors)		
Executors of Wm. Brown	J. Jones for self & Co-Exor. of Wm. Brown. For Exors. of Wm. Brown, J. Jones, Exor.	per pro. Exors. of Wm. Brown, R. Smith, Solicitor to the Estate. per pro. Exors. of Wm. Brown, R. Smith. For J. Jones, Executor of Wm. Brown, R. Robinson. J. Jones for self and Co-executors. J. Jones, Exor. of Wm. Brown. J. Jones, Executors of late W. Brown
Executors of the late Wm. Brown	J. Jones, J. Brown } Exors. of the late Wm. Brown.	
J. Brown & J. Jones, Executors of the late J. Smith	For Self and Co-Executor of the late J. Smith, J. Brown.	J. Brown. J. Jones.
Representatives of the late W. Brown.	For Self & Co-Executor of the late W. Brown, J. Smith.	J. Smith.
Trustees of Wm. Brown.	J. Brown, J. Jones } Trustees of Wm. Brown. Trustees of Wm. Brown, J. Brown. J. Jones.	per pro. Trustees of Wm. Brown, J. Brown. For Self & Co-Trustee of Wm. Brown, J. Brown. o/a Wm. Brown's Trust, J. Jones. J. Brown.
John Brown & J. Jones, Trustees of R. Smith	John Brown, J. Jones } Trustees of R. Smith.	John Brown, J. Jones.
Liquidators of the X & Y Coy., Ld.	The X & Y Co., Ltd., in Liquidation, J. Brown, J. Jones } Liquidators.	The X & Y Coy., Ld., For Self & Co-Liquidato J. Brown. J. Brown. (See LIQUIDATOR.) J. Jones.
IRREGULAR, ETC., PAYEES.		
..... order	Requires drawer's indorsement.	
.....or order	Return cheque for payee's name.	
W. Brown or	Requires W. Brown's indorsement.	
Cash or order Wages or Order Estate *a/c* or order	Sometimes indorsed by the drawer, but see under IMPERSONAL PAYEES.	
Wages or Bearer	No indorsement required.	
King Charles the First or Order	Do.	
Dick Swiveller or Order (a fictitious person)	Do.	
s.s. *Britannia* or order	Requires indorsement by an authorised official.	
Poor Rate or order	J. Brown, collector of Poor Rate (though confirmation may be desirable).	
Corporation Stock or Order	Requires City Treasurer's indorsement.	
Bearer or Order	Usually treated as payable to bearer.	
Income Tax or Order	Requires indorsement of Collector of Inland Revenue.	
My son the bearer	Requires son's indorsement.	
My son, the bearer or Order	Do.	
Bearer (J. Brown) or order	J. Brown.	
J. Brown *a/c* J. Jones	J. Brown *a/c* J. Jones.	J. Brown.
W. B.	W. B., W. Brown.	
a/c of John Brown	Placed to credit of Payee's Account per pro. British Banking Co., Ld., J. Jones, Manager.	
Brown & Jones (names transposed)	per pro. Brown & Jones, T. Smith, Manr. per pro. Jones & Brown, T. Smith, Manr.	
Ann Brown (spelled wrongly)	Ann Brown, Anne Browne. (Both in same writing.)	Anne Browne.
Robert MacIntyre (spelled wrongly)	Robert MacIntyre, Robt. McIntyre. (Both in same writing.)	Robert McIntyre.

Payee.	Correct or Usually Accepted.	Wrong or Not Usually Accepted.
W. Brown	Requires payee's indorsement.	
Brown	J. Brown.	Brown.
John Brown & Another	For Self & another, J. Brown.	John Brown.
Representatives of John Brown	For Self and Co-Executors of the late John Brown, J. Jones.	
John Brown per J. Jones	For John Brown, J. Jones. John Brown per J. Jones.	J. Brown (confirmation should be obtained).
John Brown for J. Jones	John Brown for John Jones.	per pro. J. Brown, R. Smith.
Miss Brown (now married)	M. Jones *née* Brown.	
Brown & Co. (correct title J. R. Brown & Co., Ltd.)	per pro. Brown & Co. per pro. J. R. Brown & Co., Ltd., J. Jones, Secy.	
	per pro. Brown & Co., J. Jones, Secretary. per pro. J. R. Brown & Co., Ltd., J. Jones, Secretary.	
The Secretary (drawn by a Company)	J. Jones, Secretary.	
Roseworth Estate per J. Brown	For Roseworth Estate, J. Brown.	J. Brown.
J. Brown in full settlement	(If indorsed "J. Brown in part Settlement" a banker would be justified, in the interests of his customer, in returning the cheque.)	
DIVIDEND WARRANT.		
John Brown, John Jones and R. Smith	John Brown (or John Jones or R. Smith may sign alone.)	
John Brown & Another	John Brown.	Jas. Smith (the other referred to).
John Brown	John Brown.	per pro John Brown, J. Jones.
John Brown, or Bearer	John Brown should sign.	
John Brown per British Banking Co., Ltd.	per pro. British Banking Co., Ltd., J. Jones, Manager.	

INDORSEMENT ON BANK NOTE. Where a person indorses a bank note with intent that it should act as an indorsement, and delivers it so indorsed to a third person, he renders himself liable to be sued upon the note by any subsequent holder. A person receiving a bank note in payment of a debt cannot compel the person offering it to indorse it, but where a person is asked to give change for a bank note he can, if he so wishes, decline to give the change unless the note is indorsed.

Referrring to indorsements on cheques, bills, and also on a bank note, Mr. Justice Byles (in *Keene* v. *Beard* (1860), 8 C.B.N.S. 372) said that "the act of writing may or may not be an indorsement according to circumstances," and he held that "where a man indorses an instrument of this sort, *animo indorsandi*, and delivers it so indorsed to a third person, he renders himself liable to be sued upon the instrument, as indorsee, by any subsequent holder."

By the Currency and Bank Notes Act, 1928, any person who prints, or stamps, or by any like means impresses on any note of the Bank of England any words, letters, or figures, shall be liable to a penalty not exceeding £1.

INDORSEMENT ON DEPOSIT RECEIPT. A deposit receipt is not a transferable document, and the indorsement upon it is really a discharge to the banker upon repayment of the money. If for £2 or over and the usual printed form of receipt on the back is signed, the signature must be across a twopenny adhesive stamp, unless the form is already impressed with a twopenny stamp. (See DEPOSIT RECEIPT.)

INDORSER. When a payee writes his name upon the back of a bill or cheque, he is called an "indorser," and when the instrument is negotiated to other persons, each person may indorse it in turn and become an indorser. Each indorser of a bill (or cheque) is liable thereon.

Any indorser, however, may add after his signature such words as "without recourse to me," or "*sans recours*." The sanction is given by Section 16 of the Bills of Exchange Act, 1882, which provides that any indorser may insert an express stipulation—

"(1) Negativing or limiting his own liability to the holder;

"(2) Waiving as regards himself some or all of the holder's duties."

The use of the words "*sans recours*" releases the indorser from liability in the event of the cheque being dishonoured, but does not release him from liability with respect to any forgery before his indorsement.

The liability of an indorser is defined by the Bills of Exchange Act, Section 55—

"(2) The indorser of a bill by indorsing it—

"(*a*) Engages that on due presentment it shall be accepted and paid according to its tenor, and that if it be dishonoured he will compensate the holder or a subsequent indorser who is compelled to pay it, provided that the requisite proceedings on dishonour be duly taken;

"(*b*) Is precluded from denying to a holder in due course the genuineness and regularity in all respects of the drawer's signature and all previous indorsements;

"(*c*) Is precluded from denying to his immediate or a subsequent indorsee that the bill was at the time of his indorsement a valid and subsisting bill, and that he had then a good title thereto."

From the above Section it is seen that an indorser engages to compensate a subsequent indorser if the bill is dishonoured. When a bank is the holder of a bill payable to its own order and obtains an indorsement (after its own) by a third party to strengthen its security, the third party is not liable to the bank, as the bank is a prior indorser. If the third party's indorsement is obtained, before the bank has indorsed, the bank would not be a holder in due course. (See HOLDER IN DUE COURSE.) When a bank obtains an indorsement to strengthen its security the bank "should either get, at the same time, a letter acknowledging the indorser's liability to the bank in case of the dishonour of the bill, or should have a statement to this effect written on the bill and signed by the surety." (See BACKING A BILL.)

Section 56 provides: "Where a person signs a bill otherwise than as drawer or acceptor, he thereby incurs the liabilities of an indorser to a holder in due course."

Where a person is under obligation to indorse a bill in a representative capacity as treasurer or executor, he may indorse the bill in such terms as to negative personal liability. (Section 31 (5).)

Where an indorser is dead and the party giving notice knows it, notice of dishonour must be given to his personal representative if such there be, and with the exercise of reasonable diligence he can be found. (Section 49 (9).)

Where an indorser is bankrupt, notice may be given either to the party himself or to the trustee (Section 49 (10)). (See BILL OF EXCHANGE, DISHONOUR OF BILL OF EXCHANGE, INDORSEMENT, NEGOTIATION OF BILL OF EXCHANGE.)

INDUSTRIAL AND COMMERICAL FINANCE CORPORATION. Formed in 1945 at the instance of the Government and under the ægis of the Bank of England for the purpose of making loans from £5,000 to £50,000 to small-sized concerns requiring something more than short-term accommodation as supplied by the joint stock banks, and whose requirements are not of sufficient size to justify a public flotation of shares. It has a capital of £15,000,000 and borrowing powers of twice that amount. The capital has been supplied by the principal English and Scottish banks, with a small subscription from the Bank of England.

A scheme for accommodation to big business enterprises was inaugurated at the same time under the style of Finance Corporation for Industry (*q.v.*).

INDUSTRIAL AND PROVIDENT SOCIETIES.—A society which may be registered under the Industrial and Provident Societies Act, 1893, is a society for carrying on any business or trade authorised by its rules, whether wholesale or retail, and including dealings of any description with land, provided that no member other than a registered society shall have or claim any interest in the shares of the society exceeding £200.

Co-operative societies are usually incorporated in this way.

In regard to the business of banking, the society shall be subject to the provisions of the Act. (Section 4.)

Section 19 provides—

"(1) No registered society which has any withdrawable share capital shall carry on the business of banking.

"(3) The taking deposits of not more than ten shillings in any one payment, nor more than twenty pounds for any one depositor, payable on not less than two clear

days' notice, shall not be included in the business of banking within the meaning of this Act; but no society which takes such deposits shall make any payment of withdrawable capital while any claim due on account of any such deposit is unsatisfied."

The word "limited" shall be the last word in the name of every society registered under this Act.

A registered society may (if its rules do not direct otherwise) mortgage land, and no mortgagee shall be bound to inquire as to the authority for any such mortgage. (Section 36.)

A mortgage or charge by a registered industrial society does not require registration under the Companies Act, 1948, as the society does not come within the scope of that Act.

As to registration under the Land Charges Act, 1925, see LAND CHARGES, MORTGAGE.

In *re North Wales Produce and Supply Society, Ltd.* (1922), 38 T.L.R. 518 the society obtained a loan on the security of a debenture charging all its property, book debts, cash, fixtures and personal chattels. The society was wound up and the liquidator contended that the debenture was void by virtue of provisions in the Bills of Sale Acts. It was held that the expression "incorporated company" in Section 17 of the Bills of Sale Act, 1878, (Amendment) Act, 1882 (see that Section under BILL OF SALE), does not include a society incorporated under the Industrial and Provident Societies Act, 1893. Held also that where "personal chattels" and other property of such a society are mortgaged by a deed which is not made in accordance with the statutory form of a bill of sale and registered as a bill of sale it is therefore void as regards the "personal chattels," but that fact does not prevent the deed from being valid as to the other property comprised in it.

The Agricultural Credits Act, 1928, provides that a debenture, creating a floating charge on farming stock, given by a society registered under the Industrial and Provident Societies Acts, may be registered as an agricultural charge and will not be deemed to be a bill of sale. Registration of such charge must in addition be made with the Registrar of Friendly Societies.

A receipt, executed in the manner required by the statute relating to the society, and stating the name of the person who pays the money indorsed on or annexed to a mortgage, discharges the mortgage without any formal re-conveyance. These provisions are in substitution for the existing statutory provisions relating to such receipts by the society, but not so as to render the society liable for any stamp duty which would not have been otherwise payable. (Law of Property Act, 1925, Section 115 (9).)

A member may nominate any person to receive at his death any property he has in the society to the extent of £100. (See under WILL.)

Cheques of such societies are not exempt from stamp duty.

INDUSTRIAL LIFE POLICY. The policy is usually granted upon the express condition that it shall become absolutely void, if it is in any way assigned, sold, mortgaged or otherwise parted with. In some cases, however, an indorsement may be found on the policy to the effect that the company give consent to an assignment and that the policy shall not be void by reason of such assignment.

Even if such policies may be assigned, there is very little value attaching to them on account of their surrender and paid-up values being so small. Most companies give no cash surrender value. (See LIFE POLICY.)

INFANTS. All persons below the age of twenty-one are, by English law, called infants or minors. The question as to whether a banker can with safety permit a minor to open an account and draw cheques thereon is one which has been much discussed and on which diverse opinions prevail. The generally accepted legal opinion appears now to be that a banker may, without risk, allow an infant to open an account and draw cheques upon it, but that the account must not be overdrawn, for money lent to an infant cannot be recovered, even if he gave security. All contracts entered into by infants for the repayment of money lent shall be absolutely void. (Infants' Relief Act, 1874, Section 1.)

By the Infants' Relief Act, 1874, Section 2, "no action shall be brought whereby to charge any person upon any promise made after full age to pay any debt contracted during infancy or upon any ratification made after full age, of any promise or contract made during infancy whether there shall or shall not be any new consideration for such promise or ratification after full age."

In savings banks, receipts are given by minors and accepted, but in those cases special provision is made under the Savings

Bank Acts that the receipt of a person of the age of seven years or upwards shall be a sufficient discharge.

The holder of an infant's cheque, which has been dishonoured, cannot sue the infant upon it; and where a cheque has been exchanged for a minor and is subsequently dishonoured, the money cannot be recovered by law from the minor.

An infant cannot be sued on a bill of exchange or promissory note, even though it be given for necessaries. (In *re Soltykoff*, [1891] 1 Q.B. 413.)

Section 22 (2), of the Bills of Exchange Act, 1882, provides: "Where a bill is drawn or indorsed by an infant, minor, or corporation having no capacity or power to incur liability on a bill, the drawing or indorsement entitles the holder to receive payment of the bill, and to enforce it against any other party thereto." The signature of an infant upon a bill does not in any way affect its negotiability. He may pass on a good title to others, and though he cannot be sued himself he may by his next friend sue other parties to the bill. Even if a minor accepts a bill in payment of necessaries, he cannot be sued upon it.

An infant cannot sue in his own name, except in a county court for wages due to him. In an action by an infant he must sue by his "next friend," and in an action against an infant a guardian is appointed.

But if a minor has made a false representation as to his age and thereby induced a banker or anyone to enter into a contract with him, he cannot afterwards obtain relief by proving that he is below the age of twenty-one.

The Limitation Act, 1939, does not begin to run until he has reached the age of twenty-one.

Shares with a liability should not be registered in the name of a minor, as he may repudiate any liability thereon, either before he comes of age or within a reasonable time afterwards.

An infant may sign as a witness; he may also act as an agent and sign cheques, and draw, accept, or indorse bills, and the liability rests with the person who gave him the authority to do so. He may sign cheques upon an overdrawn account if that power is included in the authority. There is nothing to prevent an infant being a partner in any business, but in any action against the firm the infant would be excluded. An infant cannot undertake the duties of an administrator or executor nor act as a proxy in bankruptcy proceedings. He cannot make a will except on active service and in the event of his death letters of administration require to be taken out by his father or mother or nearest of kin. An infant cannot be made liable on a guarantee.

A legal estate in land cannot be conveyed to an infant. (Law of Property Act, 1925, Section 1 (6).) An infant cannot be appointed a trustee. (Section 20.)

An account is sometimes opened with a banker in the joint names of a parent or guardian and an infant; such an account should be treated by the banker like an ordinary joint account as to authority for signing of cheques, etc., but he will, of course, bear in mind the non-liability of the minor for an overdraft, as before mentioned. If the minor is a very young child, the better plan is for the account to be opened in the parent's or guardian's name for the child, thus, "John Brown, In re Timothy Brown," in which case no mandate is required, and the adult has full control.

The form in which deposit receipts are sometimes issued, "John Smith for Joseph Brown (a minor)" is not a desirable one, and should be avoided.

A deposit receipt may be issued in the name of a minor. On withdrawal he is able to give a good discharge for the money.

Stock in Public Funds. By the National Debt Act, 1870, Section 19—"Where stock is standing in the name of an infant or person of unsound mind, jointly with any person not under legal disability, a letter of attorney for the receipt of the dividends on the stock shall be sufficient authority in that behalf, if given under the hand and seal of the person not under disability, attested by two or more credible witnesses." By the National Debt (Stockholders Relief) Act, 1892, Section 3—"(*a*) Where an infant is the sole survivor in an account; and (*b*) where an infant holds stock jointly with a person under legal disability; and (*c*) where stock has by mistake been bought in or transferred into the sole name of an infant, the Bank, may at the request in writing of the parent, guardian, or next friend of the infant, receive the dividends and apply them to the purchase of like stock, and the stock so purchased shall be added to the original investment."

INFEFT. To infeft means to put a person in possession of the fee simple of lands, etc.

INFLATION. Inflation occurs where there is an increase in currency without a corre-

sponding increase in commodities, or where there is an increase in paper currency without a corresponding increase in metallic backing. It shows itself in rising prices and shortages of the necessaries and comforts of life, and results from the creation of additional purchasing power, following a huge excess of public expenditure over revenue from taxes, coupled with a rapidly mounting national debt. The "inflationary gap" is that part of the Treasury borrowings not derived from public savings, but from the banks.

The end of the second world war in 1945 saw the currency inflated more than fourfold, the fiduciary issue of notes in August, 1939, being £300,000,000, whilst at the end of 1948 it was £1,300,000,000, and at the end of 1953 it was £1,675,000,000.

INGOT. Bars of gold and silver are called ingots.

INLAND BILL. The Bills of Exchange Act, 1882, Section 4, defines an inland bill as follows—

"(1) An inland bill is a bill which is or on the face of it purports to be (*a*) both drawn and payable within the British Islands, or (*b*) drawn within the British Islands upon some person resident therein. Any other bill is a foreign bill.

"For the purposes of this Act, 'British Islands' mean any part of the United Kingdom of Great Britain and Ireland, the islands of Man, Guernsey, Jersey, Alderney, and Sark, and the islands adjacent to any of them being part of the dominions of Her Majesty.

"(2) Unless the contrary appear on the face of the bill the holder may treat it as an inland bill."

The definition of "British Islands" has, since the establishment of the Irish Free State, been modified by Section 2 of Statutory Rules and Orders, 1923, to exclude the Irish Free State. A bill, therefore, that is drawn in the Irish Free State (now known as "Eire") and is payable in England is a foreign bill within the meaning of the Bills of Exchange Act. (See under FOREIGN BILL.) As to the stamp duty on such a bill see under BILL OF EXCHANGE.

By Section 36 of the Stamp Act, 1891, "a bill or note purporting to be drawn or made out of the United Kingdom is, for the purposes of stamp duty, to be deemed to have been so drawn or made, although it may in fact have been drawn or made within the United Kingdom." Thus, by the Stamp Act, a bill drawn in the Isle of Man and the Channel Islands (which places are out of the United Kingdom) is regarded as a foreign bill, whereas, by the Bills of Exchange Act, it is an inland bill.

Where an inland bill is dishonoured, it is not necessary that it should be noted or protested for non-acceptance or non-payment in order to preserve recourse against the drawer or indorser. It is only necessary when proceedings for honour are going to be taken. The sections of the Act with regard to noting and protest are given in the article PROTEST.

Where an inland bill is indorsed in a foreign country, the indorsement shall as regards the payer be interpreted according to the law of the United Kingdom. As to the other rules laid down in the Bills of Exchange Act with regard to bills drawn in one country and negotiated, accepted or payable in another, see Section 72, under FOREIGN BILL.

The following is the usual form in which an inland bill of exchange is drawn—

Birmingham, July 10, 19..

£150 0s. 0d.

Six months after date pay to me or my order the sum of one hundred and fifty pounds for value received.

STAMP 2s.

To Mr. Thomas Jones,
15 Thames Street,
London.

JOHN BROWN.

The indorsements appear upon the back of the bill, e.g.—

Pay Smith, Robinson & Co., or order.
JOHN BROWN.

Pay the Imperial Trading Co., Ltd., or order.
SMITH, ROBINSON & Co.

Per pro. the Imperial Trading Co., Ltd.,
JAMES GREEN, Manager.

This bill is drawn at Birmingham on 10th July, 19 , being payable at six months after date it falls due (or matures) on 13th January, 19 ; the six months are called

its term and the following three days are the days of grace. The date is always expressed in figures, but to use words would be quite in order. The amount is quoted in both words and figures, but either alone would be according to law, the repetition being to avoid mistakes or fraudulent alteration.

The currency of this bill on 10th July, 19 , the day it is drawn, is 187 days, on 11th July it is 186 days, and so on, this being the time it has yet to run.

This is an "after date" bill, but it might have been drawn "after sight," in which case Mr. Thomas Jones, when he accepted it, would have written the then present date in his acceptance and the due date would have been reckoned from that.

Or, instead of "Six months after date," the bill might have been drawn "At sight" or "On presentation" or "On demand," in all which three cases there would be no acceptance at all, for payment would have to be made at once.

The drawer is John Brown, who in this case is also the payee, but the drawer could have made the bill payable to anyone he pleased or to bearer.

The drawee is Thomas Jones and by writing his name across the bill he has become the acceptor; that is to say, he accepts John Brown's demand for money due, and, by the words he has added, instructs the Rivergate Branch of the British Bank (where Thomas Jones keeps his account) to pay £150 to John Brown or his order in six months' time.

This bill is said to be domiciled at the British Bank, Ltd., Rivergate, London.

Referring to the indorsements on the bill, John Brown wishes to pay £150 to Smith, Robinson & Co.; he therefore, as shown, indorses the bill over to them: who in their turn indorse it to the Imperial Trading Co., Ltd.; this firm indorse it and then, perhaps, discount it with their own bankers who will sort it away in their bill case until the time comes for presentation for payment. For stamp duties see BILL OF EXCHANGE. (See BILL OF EXCHANGE, FOREIGN BILL.)

INSANE PERSON. (See LUNACY.)

INSCRIBED STOCK. No certificates are issued to the holders of inscribed stock, but their names and the amount of the stock they hold are inscribed in the registers kept for the purpose at the registrars who have the management of the stocks. A holder of inscribed stock wishing to transfer his holding must attend personally at the Registrar's office to sign the transfer in the Stock Register. Alternatively, attendance may be given by his duly authorised attorney for this purpose. No certificate of title is issued in respect of inscribed stock, but a Stock Receipt (*q.v.*) is given which has no value and small utility, as its production is not required on any dealing with the stock.

Originally Government stocks were issued only in inscribed form, but later, stock certificates to bearer and registered stock with a stock certificate were permitted. (See NATIONAL DEBT.)

As from 1st January, 1943, inscribed stock for Government securities was abolished in favour of stock entailing the issue of certificates either registered or to bearer, the former type prevailing. Other inscribed stocks domiciled at the Bank of England, such as Metropolitan Water Board issues, have similarly been converted to registered form.

Inscribed stock is now only in vogue in respect of certain corporation stocks registered other than at the Bank of England.

The receipt for the purchase money, which is given by the vendor or his attorney to a purchaser when a transfer of inscribed stock is made, is of no value. It is not required upon a subsequent sale. To obtain a security upon inscribed stock, it must be transferred into the names of the nominees of the bank. (See POWER OF ATTORNEY, STOCK RECEIPT.)

INSOLVENCY. A person is insolvent who is unable to pay his debts, and he is said to be in a state of insolvency.

An insolvent debtor is not necessarily a bankrupt (see below) and a bankrupt is not necessarily insolvent (e.g. a partner in a bankrupt firm).

An insolvent person may have a receiving order made against him and suffer proceedings under the Bankruptcy Acts (see BANKRUPTCY, RECEIVING ORDER), or he may call his creditors together and endeavour to come to an arrangement with them (apart from the Bankruptcy Acts), usually either by offering to pay a composition—that is, to pay so much in the pound in full discharge of what he is owing to them (see COMPOSITION WITH CREDITORS)—or by offering to transfer his property to a trustee in order that it may be realised and the proceeds divided amongst his creditors according to the amounts of their respective claims. (See ASSIGNMENT FOR BENEFIT OF CREDITORS.)

Where a judgment has been obtained in a county court, and the debtor is unable to pay, if the whole indebtedness does

not exceed £50, an administration order may be made by the county court. (See ADMINISTRATION ORDER.)

When a petition is presented against a debtor, and his estate is not likely to exceed £300, the Court may make an order for summary administration. (See SUMMARY ADMINISTRATION.)

When a receiving order has been made against a debtor, it may subsequently be discharged by the Court if a proposal by the debtor for a composition in satisfaction of his debts, or a proposal for a scheme of arrangement of his affairs is accepted by the creditors. (See ACT OF BANKRUPTCY, BANKRUPTCY, COMPOSITIONS—BANKRUPTCY ACT, SCHEME OF ARRANGEMENT.)

INSPECTION OF REGISTER. The register of members of a company shall, during business hours, be open to the inspection of any member gratis, and to the inspection of any other person on payment of one shilling, or such less sum as the company may prescribe (Section 113 of the Companies Act, 1948). (See Section 115, under REGISTER OF MEMBERS OF COMPANY, as to closing the register at certain times.)

Refusal to allow the right of inspection entails heavy penalties. (See COMPANIES, REGISTER OF MEMBERS OF COMPANY.)

INSTALMENT ALLOTMENT. An allotment of stock or bearer bonds where the price of issue is allowed to be paid in several instalments. For example, the Funding Loan, 1960–90, was issued so that an investor could pay up the full price at once, or he could pay for it by eight instalments spread over a period from June, 1919, till January, 1920. (See SCRIP CERTIFICATE.)

INSTITUTE OF BANKERS. Address—Lombard Street, London, E.C.3.

The Institute of Bankers was founded in 1879 and is an association of men and women connected with the various branches of banking. Its objects are: first, to facilitate the consideration and discussion of matters of interest to bankers; secondly, to afford opportunities to its members for the acquisition of a knowledge of the theory and practice of banking; thirdly, to take any measures which may be desirable to further the interests of banking.

The Institute affords facilities for the reading, discussion and publication of papers by members and others; it arranges for the delivery of lectures on banking, mercantile law, economics, foreign languages, and other kindred subjects; and it issues certificates to those who pass the examinations approved of from time to time by the Council of the Institute.

The Institute encourages and assists in the formation of local centres.

The members of the Institute are fellows, associates, and ordinary members.

Fellows are elected by the Council. Annual subscription, three guineas.

Associates are members who have gained the certificate of the Institute. Annual subscription, one guinea.

Ordinary members are elected from the staff of any bank on the Council's list. Annual subscription, one guinea.

The *Journal* of the Institute is published bi-monthly.

The Examinations of the Institute were revised in 1945. The Associate Examination in Banking and the Trustee Diploma Examination now give place to a new Banking Diploma Examination and a revised Trustee Diploma Examination. There are also language examinations.

Syllabuses can be obtained on application to the secretary.

INSTITUTE OF BANKERS IN IRELAND. The Institute was founded in 1898.

The object of the Institute is to enable the members to acquire a knowledge of the theory and practice of banking, and to promote the consideration and discussion of matters of interest to the profession.

The Institute provides for the delivery of lectures on banking and other professional subjects; and maintains a suitable library for the use of the members. Examinations are held annually, and certificates awarded. The *Journal* of the Institute is issued quarterly.

INSTITUTE OF BANKERS IN SCOTLAND. This Institute was established in 1875.

Its object is "to improve the qualifications of those engaged in banking, and to raise their status and influence."

The object is promoted by classes, lectures and bursaries; by the formation of libraries of works on finance and kindred subjects; by examinations and the issuing of certificates to such as pass them.

The Institute consists of members and associates, who are connected with the banks in Scotland.

The Scottish Banker's Magazine is published quarterly by the Institute.

INSTRUMENT. A legal term applied to a bill, a cheque, a deed, or any document in writing by means of which some right or contract is expressed. (See NEGOTIABLE INSTRUMENTS.)

INSURABLE INTEREST. Before a person can effect an insurance on the life of another person, or can insure a ship or cargo, or a house against fire, or any other thing, he must have an insurable, that is, a pecuniary, interest in the person or thing to be insured. (See LIFE POLICY.)

INSURANCE. The word was originally applied only to fire insurance, but it is now used either for life or fire, as well as for other matters of insurance. (See ASSURANCE, CREDIT INSURANCE, FIRE INSURANCE, LICENSED PROPERTY, LIFE POLICY, MARINE INSURANCE POLICY, MUTUAL INSURANCE, POLICY OF INSURANCE, RE-INSURANCE, SPECIE—TRANSMISSION OF.)

INSURANCE CERTIFICATE. Insurance certificates are issued by insurance brokers as evidence that marine insurances have been effected. Such certificates are sometimes accepted in lieu of actual policies, but they have one great disadvantage in that the rights of the insured cannot be passed on by indorsement and delivery, as in the case of a policy. Consequently, insurance certificates are not accepted by buyers under c.i. or c.i.f. contracts, since in the event of partial or total loss of the goods insured, the buyers could not claim against the insurance company on the strength of any document other than a policy. Insurance certificates must be distinguished from cover notes; these are merely brief memoranda issued in all classes of insurance to accepted proposers on payment of the first premium stating that the latter are held covered pending the preparation of the relative policy. (See MARINE INSURANCE POLICY.)

INTANGIBLE ASSETS. In a company's balance sheet there may sometimes be found, on the assets side, items such as goodwill, trade marks, patent rights. These assets may have a saleable value if the business were sold as a going concern, but if the concern is getting into difficulties they would be practically worthless. The whole of the intangible assets should be ignored by a banker when he is considering a balance sheet in view of an application for a loan to the company. (See BALANCE SHEET.)

INTER VIVOS. (See GIFTS INTER VIVOS.)

INTERBOURSE SECURITIES. INTERNATIONAL SECURITIES. General terms indicating securities which can be bought and sold in different countries at practically the same prices.

INTEREST. Interest is the money which is paid for a loan or the use of money. In the case of a banker, interest is paid by him to customers for money deposited, and is received by him for money he has lent to customers.

In the year 1546 the taking of interest for money was made legal in England, and the rate was fixed at 10 per cent. It was reduced to 8 per cent in 1624, and to 6 per cent in 1651, and in 1714 it was further reduced to 5 per cent. (Gilbart.)

If the rate of interest is 3 per cent, the interest upon the money lent (the principal) is referred to as being at the rate of £3 per cent per annum; that is, for each £100 three pounds is payable by way of interest at the end of a complete year, and for each part of £100 or part of a year the interest is in proportion thereto.

Simple interest is calculated upon the principal only, whereas compound interest is interest which is calculated upon the principal plus interest which is due and has not been paid. A deposit receipt is an example where simple interest only is allowed. It is calculated and provided for each half-year by a banker upon the original sum deposited, but it is not added to the principal until the depositor brings in his deposit receipt and renews it for the amount with the interest added. A deposit account where interest is added, is an example where compound interest is allowed, as each half-year when the interest is calculated, it is added at once to the balance or principal and becomes part of the amount on which interest is subsequently allowed.

In a current account, interest is calculated from the actual date when a customer's cheque is paid (not from the date of the cheque), and from the actual date when money is paid to credit, which, in the case of a sub-branch, may in some cases be the day before it is actually posted in the current account ledger at the parent branch. Where a cheque is paid at another bank or branch under advice, the banker is entitled to charge interest from the date when so paid. The calculations are in most banks now effected by means of products commonly, though erroneously, called "decimals," by which the balance of an account, on the occasion of each change, is multiplied by the number of days it has remained undisturbed, the product, say, 2,650, being simply £2,650 for one day, or put in another form £1 for 2,650 days. The total of all the products on an account by the end of a half-year is therefore that number of pounds for one day at the rate of interest to be allowed or

charged. With the aid of a product table the amount of interest is very quickly ascertained. (See DECIMALS.)

If the interest on an amount is to be ascertained from a 5 per cent table, then to find the interest

at 5¼%	add	¼0
„ 4¾%	deduct	¼0
„ 6 %	add	⅕
„ 4 %	deduct	⅕
„ 6¼%	add	¼
„ 3¾%	deduct	¼
„ 3 %	deduct	⅗
„ 2½%	deduct	½
„ 2 %	deduct	⅖
„ 1 %	deduct	⅕

As to discount on a bill, see DISCOUNT.

In the case of a deposit where interest varies according to the Bank Rate, the interest is calculated by means of a table of decimals, each rate being taken as a decimal part of 5 per cent. (See INTEREST ON DEPOSITS.)

London bankers used not, as a rule, to allow interest upon a current account, but country bankers often did so, the rate being regulated according to the custom of the district and the nature of the account, commission on turnover being charged at the same time. Since December, 1945, however, no interest is allowed on current accounts.

On deposits which are subject to notice, a higher rate is usually allowed, the rate being increased (e.g. in colonial banks) up to a certain point, according to the length of notice which must be given.

No interest is, as a rule, allowed upon money on deposit receipt unless it has remained in the banker's hands for a certain specified period. The period varies according to the bank. In some cases it is fourteen days, in others one month or even two months. (See INTEREST ON DEPOSITS.)

Unless a promissory note payable on demand expressly states that interest is to be paid, interest is not recoverable. Where a bill is dishonoured, interest on the amount of the bill may be recovered from the time of presentment for payment if the bill is payable on demand and from the maturity of the bill in any other case. (See Section 57 of the Bills of Exchange Act, 1882, under DISHONOUR OF BILL OF EXCHANGE.)

There is no general law to justify interest being charged upon an advance, but by custom a banker is entitled to charge interest, and, by making half-yearly rests and adding the accrued interest to the balance, to charge compound interest. In addition to the usual custom, there may be a special agreement as to interest between the banker and a customer. A banker's right to charge compound interest may also be justified by a customer's acquiescence in the method of charging his account in previous half-years.

If a cheque is dishonoured by reason of charges having been debited to an account, at other than the usual date, without the customer's knowledge, the banker may be liable for wrongful dishonour.

Unless by agreement, a banker is under no obligation to allow interest upon money lent to him.

Upon the death of a customer it has been held that simple interest only may be charged, and not compound interest, from the date of the customer's death till the date of payment. (*Provincial Bank* v. *O'Reilly* (1890), 26 L.R.Ir. 313.)

On an account secured by an ordinary banker's mortgage for a fluctuating balance, compound interest may be charged. But where a banker takes a mortgage for a fixed sum, unless there is a special agreement to charge compound interest, he can charge only simple interest, because the position is no longer that of banker and customer but that of mortgagee and mortgagor. For this reason, a loan account which is secured by a mortgage for a fixed sum must be kept distinct from the working account. The usual method in such a case is to obtain a cheque from the debtor upon the working account for the interest upon the loan account as it falls due. In the case of a fixed mortgage the banker must deduct income tax from the amount of the interest due upon the loan before charging it to the customer's account, but if the loan is for a less period than a year the customer is not entitled to have tax deducted. A mortgagor is entitled by law to deduct income tax. When a banker deducts tax from the interest due by a customer upon a fixed mortgage, he takes credit, in his income tax return, for the amount of tax allowed to the customer; that is, the amount of tax due to be paid to the tax authorities upon the profits of the bank is reduced by the amount which he has already paid by way of the deduction from the customer's interest. Income tax is deducted from the interest on fixed deposits for a year or more by the colonial banks in London. (See INCOME TAX.)

When a judgment for mortgage money has been obtained, the interest (if more than 4 per cent in the mortgage deed) is reduced to 4 per cent.

As to interest being statute-barred, see LIMITATION ACT, 1939—Interest.

Upon the bankruptcy of a customer, interest can be proved for only up to the date of the order; or in the case of a deed of assignment to the date of the deed.

If there is any surplus from a bankrupt's estate after all debts are paid in full it shall be applied in payment of interest from the date of the receiving order at the rate of four pounds per cent per annum on all debts proved in the bankruptcy (Section 33 (8), of the Bankruptcy Act, 1914).

A secured creditor can use any surplus proceeds of sale after satisfaction of principal and interest to date of the receiving order, in satisfaction of interest up to the actual date of payment.

Where revenue issues from a bankrupt's security in a banker's hands (e.g. dividends from shares in the name of the bank's nominee, or rents from properties over which the bank has appointed a receiver), it can be used to satisfy interest accruing since the date of the receiving order, subject, of course, in the case of rents, to prior charges for rates, taxes, repairs, etc.

On any debt or sum certain, payable at a certain time or otherwise, whereon interest is not agreed for, and which is overdue at the time of the receiving order and provable in bankruptcy, the creditor may prove for interest at 4 per cent per annum to the date of the order from the time the debt was payable, if payable by virtue of a written instrument at a certain time, and if payable otherwise, then from the time when demand in writing has been made giving the debtor notice that interest will be claimed from the date of the demand until the time of payment. (See Rule 21 under PROOF OF DEBTS.) From dividends on a debt payable at a future time, a rebate of interest at five pounds per cent per annum must be deducted from the date of the dividend to the time when the debt would have become payable. (Rule 22.)

Section 66 of the Bankruptcy Act, 1914, provides—

"(1) Where a debt has been proved, and the debt includes interest, or any pecuniary consideration in lieu of interest, such interest or consideration shall, for the purposes of dividend, be calculated at a rate not exceeding five per centum per annum, without prejudice to the right of a creditor to receive out of the estate any higher rate of interest to which he may be entitled after all the debts proved in the estate have been paid in full.

"(2) In dealing with the proof of the debt, the following rules shall be observed—

"(*a*) Any account settled between the debtor and the creditor within three years preceding the date of the receiving order may be examined, and, if it appears that the settlement of the account forms substantially one transaction with any debt alleged to be due out of the debtor's estate (whether in the form of renewal of a loan or capitalisation of interest or ascertainment of loans or otherwise), the account may be re-opened and the whole transaction treated as one;

"(*b*) Any payments made by the debtor to the creditor before the receiving order, whether by way of bonus or otherwise, and any sums received by the creditor before the receiving order from the realisation of any security for the debt, shall, notwithstanding any agreement to the contrary, be appropriated to principal and interest in the proportion that the principal bears to the sum payable as interest at the agreed rate;

"(*c*) Where the debt due is secured and the security is realised after the receiving order, or the value thereof is assessed in the proof, the amount realised or assessed shall be appropriated to the satisfaction of principal and interest in the proportion that the principal bears to the sum payable as interest at the agreed rate."

When, for any reason, it is necessary to refund part of the interest charged to a customer's account, it is commonly called a rebate.

In Scotland all the banks, by agreement, make the same charges for interest and commission, so that, as far as charges are concerned, there is no advantage to be gained by a customer dealing with one bank rather than another. No interest is allowed on accounts having balances creditor, but on the other hand commission is not charged.

A ready way of telling approximately the number of years in which an amount at compound interest will double itself, is to divide 70 by the rate per cent.

At compound interest an amount doubles itself—

At 7	per cent	in 10	years	89	days.
„ 6	„	„ 11	„	327	„
„ 5	„	„ 14	„	75	„
„ 4½	„	„ 15	„	273	„
„ 4	„	„ 17	„	246	„

At 3½	per cent	in	20	years	54 days
„ 3	„	„	23	„	164 „
„ 2½	„	„	28	„	26 „
„ 2	„	„	35	„	1 day.

At simple interest an amount doubles itself—

At 7	per cent	in	14	years	104 days.
„ 6	„	„	16	„	239 „
„ 5	„	„	20	„	
„ 4½	„	„	22	„	81 „
„ 4	„	„	25	„	
„ 3½	„	„	28	„	208 „
„ 3	„	„	33	„	121 „
„ 2½	„	„	40	„	
„ 2	„	„	50	„	

INTEREST ON BILL. "Where a bill is expressed to be payable with interest, unless the instrument otherwise provides, interest runs from the date of the bill, and if the bill is undated from the issue thereof." (Section 9, s.s. 3, Bills of Exchange Act, 1882.)

In an action on a dishonoured bill, interest as damages can be claimed from the time of presentment for payment, if the bill is payable on demand, and from the maturity of the bill in any other case; but such interest may, if justice require it, be withheld, and where a bill is expressed on the face to be payable with interest at a given rate, interest as damages may or may not be given at the same rate as the interest proper (Section 57). The usual rate of interest allowed is 5 per cent, but a higher rate would be allowable if it is expressed in the bill, but the Court has power to set aside an agreement as to the rate of interest if it is considered excessive.

In practice a clause as to interest is seldom inserted in an inland bill of exchange, although this is frequently done in a promissory note, the wording then being: "On demand (or six months after date) I promise to pay to C D or order one hundred pounds with interest at the rate of five per centum per annum, for value received. A B." If the note does not contain the interest clause, interest is not legally enforceable.

The stamp need only cover the amount of principal, unless a fixed sum is mentioned as interest, e.g. "£100 with £5 interest."

In the case of *Commonwealth Bank of Australia* v. *Rosenhain* (1922), the High Court of Australia held (though the judgment does not bind an English Court) that a document drawn in New York on Melbourne, sixty days after sight pay, etc., "with interest at the rate of 8 per cent per annum until arrival of payment in London to cover value received" was not a bill of exchange. To conform to the provisions of the Bills of Exchange Act the sum payable must be certain at the fixed time for payment. "But clearly the sum was not certain on that date from anything appearing on the face of the document, for interest was to run on from the time fixed for payment, namely sixty days after sight, until arrival of payment in London, and it was quite uncertain, both on the face of the document and in fact, when this event would happen, or indeed whether it would happen at all."

INTEREST ON DEPOSITS. The interest on a deposit is quickly ascertained from the usual interest tables when the rate is the same during all the period that the money has been with the banker.

If the interest table which is used is a 5 per cent one and the rate to be allowed is 2 per cent, the interest on £1 for one day will be two-fifths or ·4 of the interest shown in the 5 per cent table. In other words, the interest on £1 for one day at 2 per cent is the same as interest on £1 for ·4 of a day at 5 per cent; for two days it will be ·8 of a day, for three days 1·2 days at 5 per cent, and so on, ·4 being added each day.

When the rate is 3 per cent, ·6 is added each day, when 2½ per cent ·5 is added, when 4 per cent ·8 is added, ·1 being added for each ½ per cent increase in the rate.

The following is a short specimen table—

2 per cent	1	Jan., 19..		·4
	2	„		·8
	3	„		1·2
	4	„		1·6
	5	„		2·0
3 per cent	6	„		2·4
	7	„		3·0
	8	„		3·6
	9	„		4·2
	10	„		4·8
	11	„		5·4
2½ per cent	12	„		6·0
	13	„		6·5
	14	„		7·0
	15	„		7·5
2 per cent	16	„		8·0
	17	„		8·4
	18	„		8·8

If a deposit made on 3rd January, 19.., is withdrawn on 16th January, it will be seen from the above table that interest must be allowed during those thirteen days at three different rates, to 6th January at 2 per cent, 6th to 12th at 3 per cent, 12th to 16th at 2½ per cent.

To ascertain the interest due, the decimals on January 3rd must be deducted from those on 16th, thus, $\frac{8{\cdot}0}{1{\cdot}2}$ the difference, 6·8, being

the number of days at 5 per cent upon the amount of the deposit to give the interest required. In the case supposed, if the amount of the deposit is £100, the interest is quickly found by referring to a 5 per cent interest table and finding the interest on the amount, £100, for 6·8 days.

Practice differs as to adding deposit interest to principal; in some cases it accumulates on a separate account until drawn by the depositor; in other cases it is added at the interest period to principal.

In the case of a deposit subject to notice of withdrawal, after notice has been received it is the practice of some banks, when the money is not withdrawn, to cease adding interest after the date when the deposit was due to be repaid. Banks do not, however, always insist upon notice being given, and when the deposit is repaid without notice, some banks deduct from the interest due to date a sum equal to the interest for the period of notice.

Interest is not, as a rule, allowed upon a deposit until the money has remained in the bank for a certain period, say, fourteen days or a month.

Income tax is deducted from the interest payable by colonial banks in London upon fixed deposits for a year or more.

(See also DEPOSIT ACCOUNTS, DEPOSIT RECEIPTS, FIXED DEPOSITS.)

INTEREST WARRANT. An order or warrant for the payment of interest upon government and debenture stocks and such-like securities. As to requisites in form, see under DIVIDEND WARRANT. A dividend warrant is an order for the payment of a shareholder's proportion of the profits of a company.

The Bills of Exchange Act, 1882, recognises, "any usage relating to dividend warrants or the indorsements thereof" (Section 97 (3), (*d*)), but no reference is made to interest warrants. See, however, the decision of Finlay, J., in *Slingsby and Others* v. *Westminster Bank, Ltd.*, under DIVIDEND WARRANT.

INTERIM DIVIDEND. The dividend of a joint stock company is declared by the company in general meeting; but power is given, in most articles of association, to the directors to pay to the members such interim dividends as appear to them to be justified by the profits which have been earned. An interim dividend is therefore one which is paid in the meantime, and which comes forward for confirmation when the general meeting is held. An interim dividend which is paid in, say, July is often less than the amount which is paid in January; e.g. if the dividend for the year is likely to be 15 per cent, 5 per cent may perhaps be paid in July and 10 per cent in January.

INTERNAL LOAN. A public loan of which the principal and interest are payable within the country that raised the loan. (See EXTERNAL LOAN.)

INTERNATIONAL BANK FOR RECONSTRUCTION AND DEVELOPMENT. Set up together with the International Monetary Fund as a result of the United Nations Monetary Conference at Bretton Woods, U.S.A., in 1944. It is colloquially known as the World Bank.

The membership of the Bank is open to all the United Nations, and the function of the Bank is to encourage international trade by financing productive projects for reconstruction and development in war-damaged countries or in special circumstances for development projects in other countries.

The Bank can make or guarantee loans for programmes of economic reconstruction and reconstruction of monetary systems, including long-term stabilisation loans. Loans and guarantees must not exceed the subscribed capital of the Bank plus its reserves and surplus. The total capital will initially be under $800,000,000, but will rise to $1,500,000,000, of which $800,000,000 will be gold and dollars, the remainder consisting of other currencies. Loans will, in the main, be financed by bond issues, which will be guaranteed by the member Governments.

At the beginning of 1947, application for $2,200,000,000 had been made.

INTERNATIONAL MONETARY FUND. Set up together with the International Bank for Reconstruction and Development as a result of the United Nations Monetary Conference at Bretton Woods, U.S.A., in 1944, its object is to establish stable relations between currencies, thus cushioning member States against temporary dislocations in foreign trade. An initial fund of £2,190,000,000 falls to be subscribed by member nations according to an arranged quota. Twenty-five per cent of the quota must be contributed in gold and the balance in the particular currency of each member at a prescribed rate of exchange. There are three main provisions for operating the Fund—

1. There must be no devaluation of currencies except by agreement.

2. The proceeds of international transactions must be freely and rapidly convertible into other currencies.

3. Members are to be able to buy with their own currencies limited amounts from the pool of foreign currencies for paying off legitimate trade balances.

At the end of 1946, it was announced that the Fund would be open for exchange operations as from 1st March, 1947. The Fund commenced with thirty-nine members and the initial parities were based on the rates of exchange ruling at the end of 1946. There is no guarantee that these rates will be unchanged, especially where there is substantial disparity between prices and wage levels.

INTERNATIONAL SECURITIES. (See INTERBOURSE SECURITIES.)

INTERPLEAD. To interplead is to bring before the Court the claims of two persons to the same object and to obtain the decision of the Court. A banker might have occasion to interplead, for example, if two persons each laid claim to a sum of money deposited with him.

INTESTACY. INTESTATE. Where a person has died without making a will, it is known as an intestacy, and he is referred to as having died intestate. In order that the affairs of the deceased may be wound up, letters of administration (*q.v.*) require to be obtained from the Probate Registry, by some person who is entitled to act as administrator.

By the Administration of Estates Act, 1925, on the death of a person intestate as to any real or personal estate, such estate shall be held by his personal representatives:

(*a*) As to the real estate upon trust to sell the same; and

(*b*) As to the personal estate upon trust to call in and convert into money such part thereof as may not consist of money,

with power to postpone such sale as they may think proper. (Section 33 (1).)

Abolition of Descent to Heir, Curtesy, etc.

With regard to the real estate and personal inheritance of every person dying after 1925 there shall be abolished:—

(*a*) All existing modes of descent, and of devolution by special occupancy or otherwise, of real estate, or of a personal inheritance, whether operating by the general law or by the custom of gavelkind or borough English.

(*b*) Tenancy by the curtesy.

(*c*) Dower and freebench.

(*d*) Escheat.

Distribution of Residuary Estate.

The residuary estate of an intestate is what is left after payment of debts, administration expenses, and statutory legacies, and Section 46 detailed the manner in which it was to be distributed or to be held on trust. This has been amended by the Intestates' Estates Act, 1952. Husband and wife are on the same footing.

(1) If a person dies intestate leaving husband or wife but no issue and no parent or brother or sister of the whole blood or issue of the latter, then the surviving spouse takes the whole estate.

(2) If a husband or wife is left with issue, then the survivor takes the personal chattels and £5,000 free of death duties and costs, with interest at 4 per cent and a life interest in half the residue.

Issue who attain the age of 21, or marry, take the residue absolutely (subject to the life interest) *per stirpes* (see under PER STIRPES).

(3) If the intestate leaves husband or wife without issue but with a parent or brother or sister of the whole blood or issue of a brother or sister of the whole blood, then the husband or wife takes the personal chattels, £20,000 free of death duties and costs, with interest at 4 per cent and half the residue absolutely.

The parent (or both parents equally) if surviving, take the other half of the residue absolutely; but if no parent survives, this half goes to the brothers and sisters and issue of deceased brothers and sisters *per stirpes*, but only upon the attaining of 21 or marriage.

(4) If the intestate leaves—

(*a*) issue, but no surviving spouse, the issue who attain 21 or marriage take all;

(*b*) parents, but no husband or wife or issue, then parents are entitled to the estate;

(*c*) brothers and sisters of the whole blood or issue of such brothers and sisters who predeceased but no husband or wife and no issue or parents, then such are entitled to the estate *per stirpes* on attaining 21 or marriage;

(*d*) no relatives mentioned before; but brothers and sisters of the half-blood or issue of such who predeceased, they are entitled to the estate *per stirpes* on attaining 21 or marriage;

(*e*) no relatives mentioned before, but grandparents, then they are entitled to the estate;

(*f*) no relatives mentioned before, but uncles and aunts or issue of such who predeceased, then they are entitled to the estate *per stirpes*, on attaining 21 or marriage;

(*g*) no relatives mentioned before; but uncles and aunts of the half-blood or issue of such who predeceased, then they are entitled to the estate *per stirpes*, on attaining 21 or marriage.

Partial Intestacy.

Where a person leaves a will effectively disposing of only part of his property, there is a partial intestacy. (See ADMINISTRATOR, PERSONAL REPRESENTATIVES.)

(See DEATH OF CUSTOMER.)

INTRA VIRES. Within the powers. (See ULTRA VIRES.)

INVESTMENT LEDGER. A separate account is opened in this ledger for each different investment. An exact description of the stock or shares is given, and there are also recorded in columns provided for the purpose, the dates when the dividends are due and received, the date of purchase, and the price paid. The date and particulars of all sales are given and the amounts are deducted from the balance. Any payments to credit in reduction of the price paid, so as to bring it down to the market value, are also deducted and the difference is the figure at which the investment appears in the balance sheet of the bank.

I O U. An I O U (that is "I owe you") is a mere acknowledgment of a debt written on a slip of paper. Its usual form is—

Leeds,
March 7, 19...

To Mr. William Brown,
2 King Street, Leeds.

I O U £10.

THOMAS JONES.

An I O U does not require to be stamped; but if to the above simple form of I O U are added such words as "I promise" or "I agree," or a date given when the money will be paid, they may have the effect of converting it into a promissory note or an agreement, and in either case such a document would require to be stamped in order to be produced as evidence in a Court. A promissory note, however, can only be stamped before it is made; an agreement, except under a penalty, must be stamped within fourteen days.

An I O U is not a negotiable instrument. It may, if necessary, be produced in Court as evidence of a debt, though it is not a proof of the amount owing.

IRELAND. Where the words "Ireland," "British Islands," or the "United Kingdom" are used, their meaning, since the formation of the Irish Free State, has been modified by Section 2 of Statutory Rules and Orders, 1923, No. 405, which is as follows—

"Subject to the provisions of this Order in Council made under Section 6 of the Irish Free State (Consequential Provisions) Act, 1922, reference in any enactment passed before the establishment of the Irish Free State to 'the United Kingdom' or 'Great Britain and Ireland,' or the 'British Islands' or 'Ireland' shall, in the application of the enactment to any part of Great Britain and Ireland other than the Irish Free State, be construed as exclusive of the Irish Free State."

IRISH FREE STATE. (Now known as "Eire.") As to the stamp duty on bills and cheques, see under BILL OF EXCHANGE and CHEQUE.

Since the establishment of the Irish Free State a bill drawn there and payable in England is a foreign bill within the meaning of the Bills of Exchange Act. (See under FOREIGN BILL.)

IRISH LAND LAWS. (See APPENDIX.)

IRON WARRANTS. Warrants for iron differ from warrants for other goods in so far that, by the custom of the iron trade, an indorsee obtains the goods free from any vendor's claim for purchase money. Where a bank had taken iron warrants as security, and the original purchaser had not paid for the iron, it was held (*Merchant Banking Company of London* v. *Phœnix Bessemer Steel Co.* (1877), 5 Ch. D. 205) that the bank was entitled to delivery of the iron. (See DOCK WARRANT.)

IRREDEEMABLE DEBENTURE. A debenture which does not contain any provision for repayment of the principal money.

Even if irredeemable, it falls to be paid upon the company going into liquidation. An irredeemable debenture practically provides an annuity in perpetuity in favour of the holder. (See DEBENTURE, PERPETUAL DEBENTURE.)

IRREVOCABLE CREDIT. An irrevocable credit is not the same thing as a confirmed credit, since a credit may be both irrevocable and unconfirmed. Dutch banks, for example, may open credits through a London bank in favour of, say, an Asiatic beneficiary, such credits to be irrevocable so far as the Dutch banks are concerned, but unconfirmed on the part of the London bank. Thus "where more than one bank is concerned, whether or not the credit is irrevocable by all depends on the instructions each receives" (*Journal of the Institute of Bankers*, May, 1936). (See DOCUMENTARY CREDITS.)

ISSUE OF BILL. The "issue" of a bill of exchange is defined by Section 2 of the Bills of Exchange Act, 1882, as "the first delivery of a bill or note, complete in form, to a person who takes it as a holder." This definition is required by reason of the wording of Section 9 (3), which provides: "Where a bill is expressed to be payable with interest, unless the instrument otherwise provides, interest runs from the date of the bill, and if the bill is undated, from the issue thereof," and Section 12, which is as follows—"Where a bill expressed to be payable at a fixed period after date is issued undated, or where the acceptance of a bill payable at a fixed period after sight is undated, any holder may insert therein the true date of issue or acceptance, and the bill shall be payable accordingly." For stamp purposes no bill of exchange or promissory note may be stamped with an impressed stamp after the execution thereof. See Stamp Act, 1891, Section 37 (2). (See DELIVERY OF BILL.)

ISSUE OF CHEQUES. The Bills of Exchange Act, 1882, specially provides that, except as otherwise stated, the rules applicable to bills of exchange are also applicable to cheques. The definition of the "issue of a cheque," therefore, is the same as that given for a bill in the preceding article. (See DELIVERY OF BILL.)

ISSUED CAPITAL. That part of the nominal or authorised capital of a company which has been issued by the directors and been taken up or subscribed by the shareholders. The issued capital may be fully paid up, or it may be only partly paid up, the remainder being the "uncalled" capital. (See CAPITAL.)

JOBBER. (See STOCK JOBBER.)

JOINT ACCOUNT (other than a partnership, executor, or trustee account). Unless otherwise provided for, all the parties to a joint account must operate jointly thereon. Likewise if powers are given to an outside party to sign, all the joint account holders must concur. And if either or any one or more of the joint account holders are authorised to operate on the account, one of them cannot give a power of attorney to an outside party to act on his behalf without the consent of the others.

A garnishee order citing a sole judgment debtor will not attach a joint account in which such debtor is a constituent.

An authority for either to sign on a joint account of two parties does not extend to other operations, such as withdrawal of items left for safe custody, etc., nor will it make one party liable for an overdraft created by the other party.

On the death of one party to a joint account, the benefit of any credit balance passes to the survivor(s) and the executors of the deceased party must look to such survivor(s) for any interest of the deceased in the balance. They cannot prevent the banker paying the survivor(s) unless they get a Court Order. In practice a banker would act warily in the case of a dispute. Where the joint account is of husband and wife, however, whether the wife can appropriate the balance on the death of her husband is a question of intention on the latter's part. Where the account was opened for a matter of convenience, the balance belongs to the husband's estate (*Marshall* v. *Crutwell* (1875), 20 L.R., Eq. 328); but where the account was opened to provide for the wife on the death of the husband, the balance belongs to the wife. (*Foley* v. *Foley*, [1911] 1 I.R. 281.)

On the death of a joint account holder, his estate is not liable for any debit balance unless he was severally liable. (See JOINT AND SEVERAL LIABILITY.)

On notice of the death of one joint account holder, any cheques drawn by the deceased alone under authority should be returned. Cheques signed by the survivor(s) may safely be paid.

The bankruptcy of a joint account holder severs the joint relationship; any mandate lapses and operations on the account must be jointly transacted by the trustee and the solvent party. Cheques drawn alone by the bankrupt must be returned; so likewise must cheques drawn by the solvent party under mandate, but care must be taken not to damage his credit and the answer should be "Joint Account holder 'A' in bankruptcy" or in similar terms.

The insanity of a party to a joint account cancels any mandate held, and the balance must be held to the order of the sane party and the Receiver in Lunacy. Failing such appointment, application should be made to the Master in Lunacy for directions.

One party to a joint account may stop payment of a cheque drawn by another party to the account.

The form of the mandate taken on the opening of a joint account differs; some banks use a comprehensive form covering all transactions on credit and debit accounts; other banks use a special form for debit accounts, stamped sixpence on account of the agreement for joint and several liability contained therein.

The following matters are usually provided for in one form or the other. Clear instructions will be given as to whether both or either or all or some of the joint account holders may draw on the account. Mention will be made that the account is with benefit to survivor; this is not a covenant (save in the case of husband and wife) but a reminder of the law on the subject. Where one party can sign alone, it will be arranged that any overdraft created by him is the responsibility also of the other party. Joint and several liability will also be arranged, for the reasons given under JOINT AND SEVERAL LIABILITY. Power to negotiate advances and to lodge security therefor will be provided for and arrangements made as to the withdrawal of items lodged for safe custody or security not only during the lifetime of the parties but also on the death of one of them.

JOINT AND SEVERAL LIABILITY. Bankers make it a rule that joint obligants to them shall also be severally liable whether as debtors, guarantors, or makers of notes.

With joint liability, a creditor can only bring one action and not several. If he sues one or some, but not all, of the joint debtors, and obtains judgment which is unsatisfied, his right of action against the remainder is barred. But with joint and several liability, a creditor has as many rights of action as there are debtors; he can sue them jointly or severally until he has recouped himself, and an unsatisfied judgment against one debtor will not be a bar to an action against the others. With joint liability, the death or bankruptcy of one debtor leaves the

creditor with sole recourse against the survivor(s) or solvent parties, but with joint and several liability the estate of a deceased or bankrupt debtor can be held liable for the amount of the debt due at the time of his decease or failure, provided such amount is determined by breaking the account.

"According to the Common Law, it is clear that on the death of one of the persons by whom a joint promise has been made, the liability devolves upon the survivors, and representatives of the deceased are under no liability." (Halsbury's *Laws of England*, Vol. VII, p. 357.)

With joint liability no right of set-off obtains in respect of any credit balances on private accounts of the parties, but with joint and several liability, credit balances on any private account of the parties may be set off against the debt on the joint account.

Partners are only jointly liable in England and Wales, but severally liable in Scotland. But in England and Wales recourse can be had to a deceased partner's estate for the firm's debts after all his private creditors have been satisfied; but if the joint and several liability has been established, the firm's creditors are not postponed to the deceased partner's private creditors, but stand on equal footing.

Where a note runs "I promise to pay" and is signed by more than one person, it is deemed to be their joint and several note. (Bills of Exchange Act, 1882, Section 85 (2).)

JOINT STOCK COMPANY. A company, or association of individuals, having a joint or common stock or capital. (See COMPANIES.)

JOINT TENANTS. Prior to 1926, property could be conveyed to two or more persons as joint tenants, each person having an equal interest in the whole of the property, and when one died his interest passed to the surviving joint tenant or tenants; or it could be conveyed to two or more persons as tenants in common, who had a unity of possession in the property, but each tenant had a separate and distinct share (the share being either equal or unequal). When one died, his share did not pass to the surviving tenant or tenants in common but could be disposed of by will.

Trustees and personal representatives, such as executors, were always joint tenants.

After 1925, tenancy in common cannot be created as a legal estate. By the Law of Property Act, 1925, the interest of joint tenants and tenants in common is in shares in the proceeds of the sale of the property and not in shares in the property itself. The conveyance vests the property in the grantees as joint tenants upon trust for sale (with power to postpone the sale), and to divide the proceeds of the sale between the persons who, in equity, are interested in the property. The legal estate is thus vested in trustees for sale, and these trustees may also be the persons who are, in equity, entitled to the proceeds of sale.

Where land is conveyed to more than four persons, the legal estate vests in the first four named in the conveyance as joint tenants upon trust for sale.

In some cases the trustees for sale may not be the persons, or the only persons, who are entitled to the proceeds of a sale.

If the trustees for sale are, in equity, joint tenants, on the death of one before a sale of the property, the representatives of the deceased joint tenant have no claim upon the proceeds of a subsequent sale. The legal estate passes to the survivors.

But a sole surviving trustee cannot give a receipt for capital moneys unless a trust corporation; he must co-opt another trustee.

If the trustees for sale are, in equity, tenants in common, on the death of one the legal estate passes to the surviving trustees for sale, who continue to hold in trust for sale and to divide the proceeds of a sale between themselves and the representatives of the deceased tenant in common.

If the trustees are the same persons as the beneficiaries under the trust for sale, the trustees can mortgage as beneficial owners. If the trustees for sale are not the beneficiaries, or not all the beneficiaries under the trust, it will be necessary to ascertain who are the persons entitled to the proceeds of sale and get them all to join in the creation of a mortgage. In many cases where land has been conveyed since 1925 to joint owners, a provision has been inserted in the conveyance authorizing them to mortgage for any purpose.

It is, however, advisable, before taking a mortgage from co-owners, to obtain the advice of a solicitor.

A survivor of joint tenants who is solely and beneficially interested can deal with his legal estate as if it were not held on trust for sale. (Law of Property (Amendment) Act, 1926.)

JOINTURE. An estate in lands settled upon

a woman, which she is to possess after the death of her husband. (See SETTLED LAND.)

JUDGES' ORDERS. (See CHARGING ORDER, GARNISHEE ORDER.)

JUDGMENT AFFECTING LAND. For the protection of persons dealing with land, it is necessary that any judgments or orders should be duly registered in some convenient place, where an examination can be made of any documents which show how the land is affected by judgments or orders which have been pronounced. This protection is afforded by registration, *inter alia*, of writs and orders in the appropriate register kept at the Land Charges Registry. Such registration constitutes actual notice to all persons and for all purposes connected with the land affected. The provisions of the Land Charges Act, 1925, are given in the article LAND CHARGES.

JUDGMENT CREDITOR. Where a creditor has obtained judgment against a debtor for the payment of a debt, he may enforce the judgment in various ways—

1. By writ of *fieri facias* (*q.v.*), by which the sheriff can seize the debtor's *goods*.
2. By writ of eligit (*q.v.*), by which the sheriff can take possession of the debtor's *lands*.
3. By garnishee order (*q.v.*), by which debts due to the debtor from a third person, e.g. a banker, can be attached.
4. By a charging order (*q.v.*), by which shares or stocks belonging to the debtor can be charged with the payment of the judgment debt.
5. If the debt is £50 or more, by issuing a bankruptcy notice (see ACT OF BANKRUPTCY), non-compliance with the terms of which will constitute an act of bankruptcy and enable the judgment creditor to have the judgment debtor's assets administered in bankruptcy.
6. By equitable execution by means of the appointment of a receiver.
7. By a writ of attachment—imprisonment.

JURYMAN. In addition to being liable to serve as a common juryman, a banker is one of those persons who may be called upon to act as a special juryman. (Juries Act, 1890, Section 6.) Sixty-five years is the age at which liability to serve upon a jury shall cease. (Juries Act, 1918.)

KAFFIR CIRCUS. A Stock Exchange name for the market for South African shares.

KAFFIRS. A Stock Exchange name for South African mining, land and investment company shares.

KANGAROOS. A Stock Exchange name for West Australian mining and land shares.

KEEPING HOUSE. The Bankruptcy Act, 1914, Section 1 (1) (*d*), enacts that a debtor commits an act of bankruptcy if, with intent to defeat or delay his creditors, he begins to keep house. A debtor "keeps house" when he confines himself to the house and refuses to see a creditor who calls to see him for payment of the debt. Refusal to see a creditor who called at an unreasonable hour would not be "keeping house" within the meaning of the Act.

KITE-FLYING. Raising money by accommodation bills.

KITES. A name given to accommodation bills (*q.v.*).

LAC, OR LAKH. A lac, or lakh, of rupees equals 100,000 rupees. The figures are usually written as Rs.1,00,000, Rs. 24,00,000, to show the number of lacs, the lacs in those two examples being, of course, one and twenty-four. 100 lacs = 1 crore (*q.v.*).

LACHES. Delays or neglect that, being sufficiently great, prevent a suitor from obtaining redress of grievances.

LAND CERTIFICATE. A certificate issued under the seal of the Land Registry to the owner of a registered title; it takes the place of title deeds as *prima facie* evidence of ownership. It contains an exact copy of the Property and Proprietorship parts of the Land Register and also comprises a Charges section which can at any time be written up to date without fee to correspond with the Charges Register by forwarding the land certificate to the Registry. A copy of that portion of the General Map in which the land in question is included is also provided. Where the certificate becomes overloaded with entries, a new one will be issued free of the cancelled entries.

In the case of an absolute title, no deeds or documents are necessary in addition to the land certificate; in the case of a good leasehold title the original lease should accompany the land certificate; and in the case of a possessory title all deeds and documents up to the date of first registration are required in addition to the land certificate. (See also LAND REGISTRATION.)

LAND CHARGES. The Land Charges Act, 1925, consolidated the various enactments relating to the registration of land charges and also provided for the registration of other charges and encumbrances previously incapable of registration.

This Act deals with unregistered land. Land with a registered title is dealt with in the Land Registration Act, 1925.

Registration of any instrument or matter under the provisions of this Act in any register kept at the Land Registry, or elsewhere, shall be deemed to constitute actual notice of such instrument or matter to all persons and for all purposes connected with the land affected, as from the date of registration. (Law of Property Act, 1925, Section 198, s.s. 1.) This Section operates without prejudice to the provisions of the Act respecting the making of further advances by a mortgagee, and applies only to instruments required to be registered under the Land Charges Act, 1925 (s.s. 2). (See MORTGAGE.)

There are kept at the Land Registry registers of—

1. Pending actions.
2. Annuities.
3. Writs and orders affecting land.
4. Deeds of arrangement affecting land.
5. Land Charges.

Pending Actions.

By the Land Charges Act, 1925, a pending action, that is any action or proceeding pending in Court relating to land or any interest in or charge on land, and a petition in bankruptcy filed after the end of 1925, may be registered in the Register of pending actions. The registration of a pending action ceases to have effect at the end of five years, but may be renewed from time to time. (Section 2.)

A pending action shall not bind a purchaser without express notice thereof unless it is registered. As respects a petition in bankruptcy, this protection only applies in favour of a purchaser of a legal estate in good faith for money, without notice of an available act of bankruptcy. (Section 3.)

Annuities.

An annuity or rent charge created and registered under Acts prior to 1926 may be registered here, but not an annuity or rent charge devolving from a marriage settlement or will. The Register will be closed when existing entries on 13th January, 1926, are vacated. Annuities created before 1926 but unregistered are found in Class E of the Land Charges section. Annuities created after 1925 are registered in the Land Charges section, Class C, iii.

Writs and Orders Affecting Land.

There may be registered (and re-registered every five years)—

1. Any writ or order affecting land.
2. Any order appointing a receiver or sequestrator of land.
3. Any receiving order in bankruptcy made after 1925, whether or not it is known to affect land. (Section 6.)

An unregistered writ or order shall be void as against a purchaser of the land. As respects an unregistered receiving order in bankruptcy, the protection only applies in favour of a purchaser of a legal estate in good faith and for money, without notice of an available act of bankruptcy. (Section 7.)

Deeds of Arrangement.

A deed of arrangement may be registered (and re-registered every five years). (Section 8.)

If not registered it shall be void as against

a purchaser of any land comprised therein. (Section 9.)

Land Charges.

The following classes of charges on land may (and should) be registered as land charges in the Register.

CLASS A. A rent, annuity, or principal money, being a charge (otherwise than by deed) upon land, created pursuant to the application of some person under the provisions of various Acts.

CLASS B. A charge on land (not being a local land charge) of any of the kinds in Class A created otherwise than pursuant to the application of any person.

CLASS C. A mortgage, charge or obligation affecting land of any of the following kinds—

i. A puisne mortgage, that is a legal mortgage not being a mortgage protected by a deposit of documents relating to the legal estate affected, and (where the whole of the land is within the jurisdiction of a local deeds registry) not being registered in the local deeds register.

In the case of a land charge, created by a company, registration under the Companies Act, 1948, is sufficient in place of registration under this Act. (Section 10 (5).)

ii. Any equitable charge acquired by a tenant for life or statutory owner under the Finance Act, 1894, or any other statute, by reason of the discharge by him of any death duties or other liabilities, and to which special priority is given by the statute (in the Act called "a limited owner's charge").

iii. Any other equitable charge, which is not secured by a deposit of documents, and does not arise under a trust for sale or a settlement and is not included in any other class of land charge (in the Act called "a general equitable charge"). This includes an annuity created after 1925.

iv. Any contract by an estate owner to convey or create a legal estate, including a contract conferring a valid option of purchase, a right of pre-emption or any other right (in the Act called "an estate contract").

CLASS D. A charge or obligation affecting land of the following kinds—

i. Any charge acquired by the Commissioners of Inland Revenue for death duties payable on any death which occurs after 1925.

This provision applies only where the duty has become a charge on the land. (Section 10 (4).)

ii. A covenant or agreement (not being between a lessor and lessee) restrictive of the user of land (in the Act called "a restrictive covenant").

iii. Any easement, right, or privilege over or affecting land, being merely an equitable interest (in the Act called "an equitable easement"). (Section 10.)

CLASS E. An annuity created before 1926 but not hitherto registered.

Yorkshire Registries.

The land charges departments in Yorkshire are concerned chiefly with the land charges in Classes A, B, C, and D.

In the case of a general equitable charge, restrictive covenant, equitable easement, estate contract affecting land within any of the three Ridings outside the City of York, and in the case of any other land charge (not being a local land charge) created by a document which shows on the face of it that the charge affects land in any of the Ridings, registration shall be effected in the prescribed manner in the appropriate local deeds registry in place of the Land Charges Registry, London. (Section 10 (6).) This is the sub-section which was substituted by the Law of Property (Amendment) Act, 1926, for the one in the Land Charges Act, 1925.

Unregistered Land Charges.

If the land charges in the above classes are not registered they shall be void, as follows—

Class A, as against a purchaser (which includes a mortgagee or lessee) of the land.

Classes B and C, when created after 1925, as against a purchaser (mortgagee or lessee) of the land.

Class D, when created after 1925, and an estate contract (Class C, iv) only as against a purchaser of a legal estate for money. (Section 13.)

A purchaser (mortgagee or lessee) shall not be prejudicially affected by notice of any instrument or matter capable of registration under the Land Charges Act, 1925, which is void by reason of non-registration. (Law of Property Act, 1925, Section 199.)

Priority Notice.

Any person intending to make an application for the registration of any contemplated charge, in pursuance of the Land Charges Act, 1925, may give a priority notice in the prescribed manner at least fourteen

days before the registration is to take effect. Where such a notice is given, it shall be entered in the register to which the intended application, when made, will relate, and if the application is presented within fourteen days thereafter and refers in the prescribed manner to the notice, the registration shall take effect as if the registration had been made at the time when the charge was created. (Law of Property (Amendment) Act, 1926, Section 4 (1), and S.R. & O., 1940, No. 1998.)

Local Land Charges.

Any charge (called a local land charge) acquired by the council of any administrative county, metropolitan borough, or urban or rural district, or by the corporation of any municipal borough or by other local authorities, which takes effect by virtue of statute, shall be registered by the proper officer of the local authority in the register of the authority. Such registration shall take the place of registration in the Land Registry.

This Section applies to local land charges affecting registered as well as unregistered land. (Section 15.)

A Local Land Charges Register consists of four parts.

Part I consists of general financial charges where a local authority has expended money on land for any purpose, and the work in question is not completed or the amount of the charge ascertainable.

Part II comprises specific financial charges where expenditure on completed work is ascertained and allocated. The charge contemplated by Part I or II is in respect of road and drainage charges.

Part III relates to town-planning schemes containing prohibitions or restrictions on the use of buildings or land.

Part IV relates to prohibitions and restrictions not arising under town-planning schemes.

Searches and Official Searches.

Any person may search in any register kept in pursuance of this Act on paying the prescribed fee.

Any person may, on payment of a fee, require the Registrar to make a search, and the Registrar shall make the search and issue a certificate setting forth the result of his search. (Section 17.)

By the Law of Property (Amendment) Act 1926, Section 4 (2), and the Land Charges Rules, 1940: "Where a purchaser has obtained an official certificate of the result of search, any entry which is made in the Register after the date of the certificate and before the completion of the purchase, and is not made pursuant to a priority notice entered on the Register before the certificate is issued, shall not, if the purchase is completed before the expiration of the fourteenth day after the date of the certificate, affect the purchaser." "In reckoning the number of days under this Section, Sundays and other days when the registry is not open to the public shall be excluded." (S.s. (3).)

Registered Land.

With the exception of local land charges, the provisions of this Act requiring registration of charges shall not apply to registered land if and so far as they can be protected under the Land Registration Act, 1925. (Section 23.) (See under LAND REGISTRATION.)

Mortgages by Companies.

The provisions respecting the registration of mortgages and charges under the Companies Act, 1948 are given in the article REGISTRATION OF CHARGES. See also under MORTGAGE for registrations and searches necessary when taking charges over land.

LAND REGISTRATION. The Land Registration Act, 1925, repealed the whole of the Land Transfer Act, 1875, and most of the Land Transfer Act, 1897.

Registration of titles to land is compulsory in the Administrative County of London (1899), the County Borough of Eastbourne (1926), the County Borough of Hastings (1929), the Administrative County of Middlesex (1937), the County Borough of Croydon (1939), the County of Surrey (1952), and the County Borough of the City of Oxford (1954). This does not mean that all land in these areas must automatically be registered, but only whenever there is a disposition on sale or the grant of a lease of not less than forty years.

The extension of compulsory registration is accomplished by Order in Council—

(*a*) following a petition of a county authority (Eastbourne, Hastings, Croydon, and Oxford are the only examples to date);

(*b*) by Order in Council without petition from a County Authority. By Section 120, Land Registration Act, this method could not operate until the expiration of ten years from 1st January, 1926, and during the first available year (1936) only one Order was to be made. Accordingly, an Order in Council was made

on 3rd July, 1936, whereby registration of title to land was to be compulsory on sale in the Administrative County of Middlesex on and after 1st January, 1937. (For the position *re* unregistered land in this area, see MIDDLESEX REGISTRY OF DEEDS.)

Any estate owner outside the compulsory areas can register his title voluntarily. Where land in the three Ridings of Yorkshire is so registered, it is exempt from the law relating to the Yorkshire registries of deeds. It is possible in a voluntary area to have a registered title removed from the register and for the land to revert to the unregistered system of conveyancing.

The Land Register.

This consists of three parts: (1) The Property Register giving the title number, a short description of the property, and a reference to the General Map, (2) the Proprietorship Register, giving the name, address, and description of the proprietor, the date of his registration, and the consideration that passed, (3) the Charges Register, whereon are placed details of charges, leases, covenants, etc. The Land Register is private and can be inspected only by permission of the registered proprietor. (Section 112.)

The Land Certificate when issued is a copy of the Land Register with the addition of a scale plan of the registered property. Certain items can be enrolled on the register after issue of the certificate, without production of the latter, but the certificate will always be written up to correspond with the Register without charge.

From 1st January, 1926, legal estates shall be the only interests in land in respect of which a registered title can be given. (Section 2.) (See LEGAL ESTATES.)

In a compulsory area, every conveyance on sale of freehold land and every grant of a term of years absolute, not being less than forty years, and every assignment on sale of leasehold land held for a term of years absolute having not less than forty years to run, must be registered. (Section 123.) Leases under twenty-one years to run cannot be registered; leases over twenty-one but under forty years may be registered. But where the freehold title, out of which the lease is granted, is registered, any lease with over twenty-one years to run must be registered, whether in a compulsory or voluntary area.

Trust interests are, as far as possible, kept off the Register (Section 74) but sometimes find a place in the Proprietorship section of the Register, e.g. where the registered proprietor is the tenant for life a restriction will be entered against a transfer on sale unless the consideration money is paid into Court or to the trustees of the settlement. Likewise, where the registered proprietors are joint tenants, a note will be made that no transfer on sale will be registered unless the consideration money is paid to at least two trustees or a trust corporation.

Such matters as deeds of arrangement, receiving orders, and pending actions are protected by lodging a creditor's notice, or inhibition, or a caution respectively. These, with restrictive covenants and annuities, are registered in the Charges section.

Personal covenants are not entered on the Charges Register, but sometimes an office copy of the conveyance or grant of a lease wherein they are recited is stitched in the land certificate on first registration. Attention is drawn on the land certificate to the possible existence of easements and leases of less than twenty-one years, which can be ascertained by personal inquiry.

There are four classes of title granted: absolute, good leasehold, possessory, and qualified.

Absolute Title.

This is granted in respect of a freehold estate after examination of the applicant's title by the Registrar and, in some cases, advertisement in the *London Gazette* and a local paper.

The grant of an absolute title gives the owner a state-guaranteed title against all the world and thereafter the land certificate is the one essential document of title, the former title deeds being redundant.

Absolute title in respect of leasehold land is granted only on first registration where there is evidence of the freehold title from which the lease has been granted—usually where the freehold interest is already registered with absolute title.

Good Leasehold Title.

Usually a leaseholder cannot produce evidence of the freeholder's title to grant the lease (he cannot demand it of the freeholder—Law of Property Act, Section 44 (2)) and hence a good leasehold title is granted on first registration. In such a case,

the lease should accompany the land certificate. A good leasehold title may be converted into an absolute title after ten years on proof that the proprietor or successive proprietors have been in possession for that time. (Land Registration Act, 1925, Section 77 (4).)

Possessory Title.

Where a possessory title is granted, no official examination is made other than to establish that the applicant has a *prima facie* right to the land and no guarantee of title is given up to the point of registration. From that date, however, the title is guaranteed, and dealings can be made only by registered instruments. All the documents of title must accompany the land certificate, and the title up to the date of registration must be investigated in the ordinary way. Where land has been registered with a possessory title, if freehold for fifteen years and if leasehold for ten years, the Registrar may grant an absolute title in the case of freehold land and a good leasehold title in the case of leasehold land.

The Registrar can refuse to register with possessory title and can grant an absolute or good leasehold title as the case may be, whether the applicant consents or not. (Land Registration Act, Sections 4 (3) and 8 (4).)

Possessory titles are consequently now quite exceptional.

Qualified Title.

This is practically unknown and was devised to meet cases where the title can be established only for a limited period. A title so registered is subject to any rights or interests arising before a specified date or that are specifically described in the Land Register.

Mortgages of Registered Land.

The counterpart of a legal mortgage of unregistered land is, in the case of registered land, a registered charge. This gives the owner of the charge the equivalent of a lease of 3,000 years if a freehold is concerned and a sub-lease for the term of the lease less one day if leasehold. The chargee also gets all the powers and remedies of a legal mortgagee of unregistered land. A registered charge must be by deed, but may be in any form provided that the land is identified by reference to its title number, or in any other manner not requiring reference to other documents. The Land Registry supply a form of charge (Form 45), but bankers usually use a form of charge under seal incorporating the special features of a banker's mortgage. (See BANKER'S MORTGAGE.) The form of charge with a copy must be lodged at the Registry, together with the land certificate and the relative search certificate. The Registry keep the last two documents, together with the duplicate of the charge, and issue a charge certificate in which is stitched the original charge branded with the Land Registry stamp. The stamp duty on a registered charge is 5s. per cent on the highest amount to be advanced or on any limit named on the charge.

Before 1914 charge certificates were not issued, but the land certificate was returned to the chargee with an office copy of the charge indorsed with a certificate of registration. Before 1926 the land certificate was not impounded by the Registry, and before 1936 the practice was to retain the original charge and stitch the office copy thereof in the charge certificate.

Before taking a registered charge, an official certificate of search should be obtained on Form 94 with the written authority of the registered proprietor—such certificate will be supplied free. Personal searches cost a shilling and are discouraged by the Registrar. An official search is to be preferred because any errors therein are the liability of the Registry and, if the application to register the charge is lodged with the search certificate within fourteen days of the date of the latter, no adverse entries in the interim will affect the charge, with the exception of a mortgage caution or a priority notice (see below). In cases of urgency a search may be requisitioned by telegram or telephone (Rule 293), but the reply will be limited to a statement that there is no subsisting entry or otherwise.

A priority notice may be given by an intending chargee on Form 18 accompanied by the land certificate. Provided the charge is delivered for registration within fourteen days of the giving of the notice, it will have priority over any application or instrument delivered in the meantime.

The priority of a registered charge is regulated by the date of its registration and not by the date of its creation.

Where, as in the case of a registered charge given to a bank, the charge is drawn to secure further advances, the Registrar must advise the chargee before making any entry in the Register—such as a second charge—that would adversely affect the

priority of any further advances by the first chargee. (Section 30.)

Where the security is vacated, Form 53 (Discharge of Registered Charge) together with the Charge Certificate is forwarded to the Registry. Provided that the form of discharge does not have any sort of re-conveyance added to it, a twopenny receipt stamp will suffice; otherwise stamp duty at the rate of a shilling per cent on the highest amount advanced will be required. The form of discharge will require sealing by the bank.

There is an alternative form of effecting a legal mortgage of registered land provided by Section 106—by the execution of an ordinary legal mortgage and registering a special form of caution known as a mortgage caution at the Land Registry. This must be accompanied by the land certificate, the mortgage deed, and a certified copy thereof. The caution is entered on the Register and the original mortgage returned to the chargee. This method, however, is practically unknown.

Second Charge of Registered Land.

This is done by lodging the charge in duplicate at the Registry and getting a certificate of second charge stitched therein. Alternatively, the second charge may not be registered, but a caution lodged at the Registry.

Sub-charges.

A sub-mortgage of registered land is obtained by lodging the charge certificate at the Registry with the sub-charge in duplicate and getting in exchange a certificate of sub-charge. Alternatively, an equitable sub-charge can be obtained by giving notice of deposit of the charge certificate to the Registry and getting the Registrar's acknowledgment thereof. In such a case, it is usual to take a sub-charge under seal, although it is not registered.

Equitable Mortgages of Registered Land.

By Section 66 the deposit by the registered proprietor of the land certificate with a third party creates a lien equivalent to a lien created in the case of unregistered land by the deposit of documents of title (i.e. an equitable mortgage). Such a charge can be protected by lodging a special form of caution at the Land Registry called "Notice of Deposit of Land Certificate" (Form 85A). This should be signed on behalf of the bank by the manager or his deputy. It is sent with a duplicate which is returned to the cautioner as an acknowledgment. On receipt of the Notice of Deposit, no dealings may take place in the land without prior warning to the party lodging the Notice.

Where a banker is content to take an equitable charge over registered land by such means he may also require a memorandum of deposit to be executed by his customer, or, more usually, the latter will complete a charge under seal which is capable of registration at a later date.

The certificate will be forwarded to be written up to date or searches made.

Where a title is being registered for the first time, or where a title is in course of transfer, and consequently the land certificate is not immediately available for deposit, Notice of Intended Deposit can be lodged at the Registry on Form 85C, signed by the prospective registered proprietor. When the land certificate is eventually deposited with the lender, there is no need to lodge an additional Notice of Deposit.

Where the land certificate is released on repayment of the advance, the Notice of Deposit should be withdrawn. The duplicate Notice of Deposit, which the Registry returns to the bank as an acknowledgment, contains on the reverse side a form of withdrawal for this purpose; it should be signed by the manager or his deputy. Any unregistered form of charge which has been held does not need a formal discharge, but may be cancelled.

No searches of, or registrations on, the Land Charges Register are necessary in the case of registered land; in the case of limited companies, however, searches should be made at Bush House and registration of the charge made there in addition to the Land Register.

LAPSED POLICY. A policy of insurance which has become useless through non-payment of the premium. (See LIFE POLICY.)

LARCENY. Theft. For the purposes of the Larceny Act, 1916, "A person steals who, without the consent of the owner, fraudulently and without a claim of right made in good faith, takes and carries away anything capable of being stolen with intent, at the time of such taking, permanently to deprive the owner thereof: Provided that a person may be guilty of stealing any such thing notwithstanding that he has lawful possession thereof, if, being a bailee or part owner thereof, he fraudulently converts the same to his own use or the use of any person other than the owner." (Section 1 (1).)

Every person who, being employed in the capacity of a clerk or servant, steals any

money or valuable security belonging to, or in the possession of his employer, or fraudulently embezzles any money or valuable security received into his possession for his employer, shall be guilty of felony and on conviction thereof liable to penal servitude for any term not exceeding 14 years. (Section 17.)

Every person who, being a director, member, or officer of any body corporate or public company, fraudulently applies for his own use, or for any purposes other than the purposes of such body or company, any of the property of such body or company; and every person who, being entrusted with any property in order that he may retain it in safe custody or apply it for any purpose, fraudulently converts it to his own use or the use of any other person; shall be guilty of a misdemeanour and on conviction liable to penal servitude for any term not exceeding seven years. (Section 20.) This paragraph does not apply to any trustee under any express trust created by a deed or will or any mortgagee of any property, in respect of any act done in relation to the property comprised in the trust or mortgage. (See FALSIFICATION OF ACCOUNTS.)

LATIN MONETARY UNION. The Union was formed in 1865 by France, Italy, Belgium, and Switzerland. Greece joined it in 1875. These States were pledged by the terms of their agreement to accept without distinction, and to use as interchangeable, gold pieces conforming to certain conditions, and five franc silver pieces of an agreed type and bearing the imprint of the high contracting parties. The unit of value was the same in each country, though called by different names: in France, Switzerland, and Belgium the franc, in Italy the lira, and in Greece the drachma. Austria, Finland, Romania, Spain, and other countries adopted the system but without joining the Union. The Union is now non-existent.

LAW MERCHANT. (*Lex mercatoria.*) The law merchant "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 . . ." (*Goodwin* v. *Robarts* (1875), L.R.10 Exch. 337.)

The rules of common law, including the law merchant, save in so far as they are inconsistent with the express provisions of the Bills of Exchange Act, 1882, apply to bills of exchange, promissory notes, and cheques (Section 97 (2), of that Act). (See STATUTE LAW.)

LAW OF PROPERTY. The Law of Property Act, 1922, made radical changes in the law relating to the transfer of land. That Act, and the Amendment Act, 1924, were almost entirely repealed, and in their place seven Acts were passed which consolidated or codified the law and made further changes. The Acts are—

Law of Property Act, 1925;
Settled Land Act, 1925;
Land Charges Act, 1925;
Land Registration Act, 1925;
Trustee Act, 1925;
Administration of Estates Act, 1925;
Universities and College Estates Act, 1925.

These Acts came into force on 1st January, 1926, and extend only to England and Wales.

The object of this legislation was to assimilate the law of real and personal property, and to improve and simplify the law and practice.

The following changes, amongst others, are effected by the Law of Property Act—

1. Legal estates in land are reduced to two—
   (*a*) An estate in fee simple absolute in possession;
   (*b*) A term of years absolute.
2. Settlements and trusts are kept off the title.
3. In settlements of land two deeds are required—
   (*a*) A vesting deed, giving the tenant for life the legal estate.
   (*b*) A trust deed, declaring the trusts.
4. Descent to heir, curtesy, and dower are abolished.
5. Copyhold and customary tenures are abolished.
6. Tenancy in common as a legal estate is abolished.
7. In a mortgage of freeholds the mortgagee takes by demise a legal term of years and the mortgagor retains the legal fee simple.
8. Many charges on, or obligations affecting, land are to be registered.

The provisions of the Acts, so far as they are of interest to bankers, are entered in the appropriate articles. Reference may be made, for the principal of those provisions, to the following articles—

Abstract of Title.
Conveyance.
Copyhold.
Intestacy.

Land Charges.
Land Registration.
Legal Estates.
Mortgage.
Personal Representatives.
Settled Land.
Tenants in Common.
Trustee.
Trustee Investments.
Yorkshire Registry of Deeds.

LAW REFORM (MARRIED WOMEN AND TORTFEASORS) ACT, 1935. This Act enlarges a married woman's power to deal with property and to enter into contracts whilst extending her legal liability. By Section 1 a married woman can hold and dispose of property, be capable of rendering herself and being rendered liable on any tort, contract, debt, or obligation, can sue and be sued, and shall be subject to the law of bankruptcy, in all respects as if she were a feme-sole. Section 2 abolished restraint on anticipation, but any restraint on anticipation existing before 1st January, 1936, or imposed in any instrument executed before that date was to continue to be or would become effective. But this was qualified by Section 2 (3), which provided that the will of any testator who dies after 31st December, 1945, shall be deemed to have been executed after 1st January, 1936, notwithstanding that it was executed before that date. This put a time limit on the possibility of any testamentary restraint on anticipation not yet in force.

But the Married Women (Restraint on Anticipation) Act, 1949, has now abolished all such restraints. A creditor can now get judgment against a married woman personally, and against her property notwithstanding it was subject to a restraint on anticipation imposed before 1936. Bankruptcy proceedings are now available whether a married woman is in trade or business or not. (See MARRIED WOMAN.)

LEASE AND RELEASE. Prior to the year 1841 the usual method of conveyance of a freehold estate was by a lease and release. On one day a lease was granted for one year to the person to whom the land was to be transferred, and on the following day a release was granted to him. In olden times a transfer of land was effected by means of actual delivery, "livery of seisin" (*q.v.*) (i.e. delivery of possession), a method of transfer called "feoffment" (*q.v.*). A conveyance by lease and release had the same effect. By the lease the lessee was placed in actual possession of the land, and the next day the grantor released the freehold or reversion to the lessee, thus making him the owner. From 1841 to 1845 a "release" alone was sufficient to answer the purpose, in accordance with 4 & 5 Vict. c. 21, "An Act for rendering a release as effectual for the conveyance of freehold estates as a lease and release by the same parties." In 1845 it was enacted that the conveyance of freeholds shall be deemed to lie in grant as well as in livery. Since that date freehold land has therefore been transferred by a deed of grant called a conveyance. (See CONVEYANCE, FREEHOLD.)

LEASEHOLD. (Saxon *leasum*, to enter lawfully.) Where the owner of freehold land grants it to a person for a term of years it is called a lease and the land is then leasehold. The person leasing it is the lessor (who is possessed of the reversion), and the party in whose favour the lease is given is the lessee. When a lease is granted for more than three years the land is "demised" by deed to the lessee. When the lessee transfers his term to some one else he "assigns" the lease. The consideration in a lease may be the payment of so much per annum, or a lump sum, called the premium, in addition to the annual payment together with covenants. When a lessee grants to another person a part only of his interest under a lease, it is termed a sub-lease, or under-lease.

The interest of a lessee may be a tenancy at will or for years, and is personal property. The subject-matter of a lease must be real estate or a chattel real.

In *Camberwell and South London Building Society* v. *Holloway* (1879), 13 Ch.D. 754, Jessel, M.R., said: "The word 'lease' in law is a well-known legal term of well-defined import. No lawyer has ever suggested that the title of the lessor makes any difference in the description of the instrument, whether the lease is granted by a freeholder, or by a copyholder, with the licence of the lord, or by a man who himself is a leaseholder. It being well granted for a term of years it is called a lease. It is quite true that where the grantor of the lease holds for a term, the second instrument is called either an under-lease or a derivative lease, but it is still a lease."

In taking the deeds of leasehold property as security, it should be remembered that failure to fulfil the covenants contained in the lease may result in the forfeiture of the lease, and re-entry of the lessor. If the last receipt for the landlord's rent is produced,

it is a waiver of any breach of covenant of which the landlord was aware before giving the receipt, but it is not a waiver with regard to any breach of which he was ignorant.

By the Law of Property Act, 1925—

A right of re-entry or forfeiture under any stipulation in a lease for a breach of any covenant in the lease shall not be enforceable unless the lessor serves on the lessee a notice:

(*a*) specifying the breach complained of, and

(*b*) if the breach is capable of remedy, requiring the lessee to remedy it, and

(*c*) in any case, requiring the lessee to make compensation for the breach,

and the lessee fails to remedy the breach or to make reasonable compensation in money to the lessor. (Section 146.) This Section does not apply to a condition for forfeiture on the bankruptcy of the lessee.

Under a contract to grant a term of years to be derived out of a freehold estate, the intended lessee shall not be entitled to call for the title to the freehold; and on a contract to grant a lease for a term of years to be derived out of a leasehold interest with a leasehold reversion, the intended lessee shall not have the right to call for the title to that reversion. These Sections, however, apply only where a contrary intention is not expressed in the contract. (Section 44.)

Where a lease is made under a power contained in a settlement, will, Act of Parliament, or other instrument, any preliminary contract for or relating to the lease shall not, for the purpose of the deduction of title to an intended assign, form part of the title, or evidence of the title, to the lease. (Section 44.)

Where land sold is held by lease (not including under-lease), the purchaser shall assume, unless the contrary appears, that the lease was duly granted; and, on production of the receipt for the last payment due for rent under the lease before the date of actual completion of the purchase, he shall assume, unless the contrary appears, that all the covenants and provisions of the lease have been duly performed and observed up to the date of the actual completion of purchase. (Section 45.)

Where land sold is held by under-lease, the purchaser shall assume, unless the contrary appears, that the under-lease and every superior lease were duly granted, and on production of the last receipt for rent he shall assume that all covenants and provisions of the under-lease and of every superior lease, as well as all rent due, have been duly performed and paid up to date. (Section 45.)

A mortgage of leasehold property, after 1925, is to be effected by a sub-demise for a term of years absolute, less by one day at least than the term vested in the mortgagor, subject to a provision for cesser on redemption. (See under MORTGAGE.) The mortgagor retains a legal term of years absolute, and the mortgagee takes a legal term of years, so that they both have legal estates. (See LEGAL ESTATES.)

A mortgage may also be effected by deed expressed to be a charge by way of legal mortgage. (See MORTGAGE.)

Since 1925 a mortgage of leaseholds cannot be made by assignment.

Where any part of the property of a bankrupt consists of land of any tenure burdened with onerous covenants, the trustee may, with leave of the Court, disclaim the property. Where a trustee disclaims leasehold property the Court shall not make a vesting order in favour of any person claiming under the bankrupt, whether as under-lessee or as mortgagee by demise, except upon the terms of making that person subject to the same liabilities and obligations as the bankrupt was subject to under the lease in respect of the property at the date when the bankruptcy petition was filed, 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 (Section 54, Bankruptcy Act, 1914).

A lessor cannot compel an equitable mortgagee by deposit of a lease to take a legal assignment, but if the mortgagee enters into possession of the property he is liable on the covenants of the lease.

If there is a covenant in the lease that the lessee cannot sub-demise without the consent of the lessor, the licence of the lessor should accompany the deeds where there is a mortgage by sub-demise, but if the deeds are held merely with a memorandum of deposit, the licence is not required. The lease should be perused to see whether the lessor's consent is required for a mortgage of the property, or whether he requires notice of a mortgage. (See LICENCE TO ASSIGN.)

Upon the death of an owner of leasehold property, the estate becomes vested in the personal representatives (executors or administrators) of the deceased. When, therefore, the deeds of leasehold property are lodged

by a borrower who has obtained the property, after the death of the previous owner, the assent in writing of the personal representatives should be deposited along with the title deeds. The assent operates to vest the legal estate in the person named therein. (See PERSONAL REPRESENTATIVES.)

Where the deeds of leasehold property are deposited as security, they should as a rule be accompanied by the original lease, but it may occur that the original lease included two properties, and is not along with the deeds given as security. There should, however, be an attested copy of the lease, or it should be abstracted, and an acknowledgment given for its production. Subject to any stipulation to the contrary in the contract for the sale of land, thirty years shall be the period of commencement of title which a purchaser may require.

Where a sub-lease is deposited as security, it should be accompanied by an attested copy of the original lease.

If parts of a leasehold property have been sub-leased, the counter parts of the sub-leases should accompany a deposit of the lease or assignment thereof.

As to the general form of a building lease, see BUILDING LEASE.

In Scotland, an assignment of a lease for thirty-one years and longer, when recorded in the Register of Sasines, forms a legal security; but, when the term is for a less period, it is necessary that the assignee enter into possession, otherwise the assignment does not hold good as against creditors. (See TITLE DEEDS.)

LEEMAN'S ACT. (Sale and Purchase of Bank Shares Act, 1867, 30 Vict. c. 29.) The name of an Act of Parliament (passed with the intention of preventing speculation in bank shares) by which it is provided that all contracts for sale or purchase of bank shares or stock except shares or stock of the Bank of England or Bank of Ireland must set forth the numbers of the shares or stock, or, if there are no distinguishing numbers, the name of the registered proprietor. Section 1 is as follows—

"All contracts, agreements, and tokens of sale and purchase which shall be made or entered into for the sale or transfer, or purporting to be for the sale or transfer, of any share or shares, or of any stock or other interest, in any joint stock banking company in the United Kingdom of Great Britain and Ireland constituted under or regulated by the provisions of any Act of Parliament, Royal Charter, or letters patent, issuing shares or stock transferable by any deed or written instrument, shall be null and void to all intents and purposes whatsoever, unless such contract, agreement, or other token shall set forth and designate in writing such shares, stock, or interest by the respective numbers by which the same are distinguished at the making of such contract, agreement, or token on the register or books of such banking company as aforesaid, or where there is no such register of shares or stock by distinguishing numbers, then unless such contract, agreement, or other token shall set forth the person or persons in whose name or names such shares, stock, or interest shall at the time of making such contract stand as the registered proprietor thereof in the books of such banking company; and every person, whether principal, broker, or agent, who shall wilfully insert in any such contract, agreement, or other token any false entry of such numbers, or any name or names other than that of the person or persons in whose name such shares, stock, or interest shall stand as aforesaid, shall be guilty of a misdemeanour, and be punished accordingly, and, if in Scotland, shall be guilty of an offence punishable by fine or imprisonment."

This Act is still in force, but its provisions are disregarded on the London Stock Exchange, as it is not the practice to specify the numbers of bank shares on the contract note. Where a person, in ignorance of that practice, instructed his brokers to purchase for him certain shares in a joint stock bank, and, before the settling day, repudiated the contract, it was held (*Perry* v. *Barnett* (1885), 15 Q.B.D. 388) that the contract, which was made contrary to this Act, was not binding upon him. But where a person purchases bank shares and is aware of the practice of the Stock Exchange he cannot repudiate the contract.

Sections 2 and 3 of the Act are as follow—

"2. Joint stock banking companies shall be bound to show their list of shareholders to any registered shareholder during business hours, from ten of the clock to four of the clock.

"3. This Act shall not extend to shares or stock in the Bank of England or the Bank of Ireland."

LEGACY DUTY. The duty which was payable upon bequests of personalty (not including leaseholds) by a testator who is domiciled in the United Kingdom at the time of his death, or in respect of personal

property received, in the case of intestacy, by the next of kin.

Legacy Duty was abolished by the Finance Act, 1949. (See ESTATE DUTY.)

LEGAL ESTATES. From 1st January, 1926, there are only two legal estates in land, fee simple (Freehold) and a term of years absolute (Leasehold). Interests or charges in or on land, such as easements, rent charges, etc., are also called "legal estates." All other charges are equitable interests. This is enacted in the Law of Property Act, 1925, as follows—

Section I. "(1) The only estates in land which are capable of subsisting or of being conveyed or created at law are—

"(*a*) An estate in fee simple absolute in possession;

"(*b*) A term of years absolute.

"(2) The only interests or charges in or over land which are capable of subsisting or of being conveyed or created at law are—

"(*a*) An easement, right, or privilege in or over land for an interest equivalent to an estate in fee simple absolute in possession or a term of years absolute;

"(*b*) A rentcharge in possession issuing out of or charged on land being either perpetual or for a term of years absolute.

"(*c*) A charge by way of legal mortgage;

"(*d*) Land tax, tithe rentcharge, and any other similar charge on land which is not created by an instrument;

"(*e*) Rights of entry exercisable over or in respect of a legal term of years absolute, or annexed, for any purpose, to a legal rentcharge.

"(3) All other estates, interests, and charges in or over land take effect as equitable interests."

Death Duties.

A purchaser of a legal estate shall take it free from any claim for death duties (estate duty, succession duty, legacy duty), unless the charge for such duties is registered as a land charge. (Section 17 (1).) This does not apply to registered land. (See LAND CHARGES.)

Tenancy in Common.

Tenancy in common as a legal estate was abolished on January 1, 1926. (See provisions of the Act under TENANCY IN COMMON.)

Joint Tenancy. (See JOINT TENANTS.)

A legal estate may subsist concurrently with or subject to any other legal estate in the same land. (Section 1 (5).) For example, a mortgagor of freeholds retains the legal fee simple and the mortgagee also has a legal estate, as he takes by demise a term of years absolute. They are both called "estate owners." In a mortgage of leaseholds, the mortgagor retains a term of years absolute and the mortgagee takes by sub-demise a legal term of years absolute. (See MORTGAGE.) (See SETTLED LAND.)

LEGAL MORTGAGE. This is accomplished in the case of a freehold by the demise of a term of years absolute, subject to cesser on redemption, or by a charge by deed expressed to be by way of legal mortgage. (Section 85, Law of Property Act, 1925.) A legal mortgage of a leasehold is made by the grant of a sub-lease less by at least one day than the unexpired term of the borrower, subject to cesser on redemption, or by a charge by way of legal mortgage. Before 1926 a legal mortgage of a freehold was made by the conveyance of the fee simple to the mortgagee, the mortgagor being left with the equity of redemption. Thus only one legal mortgage could be subsisting at one time and second and subsequent mortgages were equitable only, for the fee simple was in the hands of the first mortgagee. By the Law of Property Act, 1925, it is possible for there to be any number of legal mortgages subsisting at the same time on the same property, for the fee simple remains in the mortgagor who grants legal estates in the shape of terms of years to successive mortgagees. Thus, a first mortgagee may get a lease of 3,000 years, and a second mortgagee a lease of 3,000 years and one day, and so on. (See EQUITY OF REDEMPTION, MORTGAGE.)

LEGAL TENDER. A legal tender is a tender of money of such description that the person to whom it is tendered will put himself in the wrong if he refuses to accept it.

A legal tender requires that the exact sum of the debt must be tendered, without necessitating any change.

COINS. The Coinage Act, 1870 (33 Vict. c. 10), Section 4, enacts "a tender of payment of money, if made in coins which have been issued by the Mint in accordance with the provisions of this Act, and have not been called in by any proclamation made in

pursuance of this Act, and have not become diminished in weight, by wear or otherwise, so as to be of less weight than the current weight, that is to say, than the weight (if any) specified as the least current weight in the first schedule to this Act, or less than such weight as may be declared by any proclamation made in pursuance of this Act, shall be a legal tender.

"In the case of gold coins for a payment of any amount:

"In the case of silver coins for a payment of an amount not exceeding forty shillings, but for no greater amount: (now cupro-nickel).

"In the case of bronze coins for a payment of an amount not exceeding one shilling, but for no greater amount.

"Nothing in this Act shall prevent any paper currency, which under any Act or otherwise is a legal tender, from being a legal tender."

By Section 5: "No piece of gold, silver, copper or bronze, or of any metal or mixed metal, of any value, shall be made or issued, except by the Mint as a coin or a token of money, or as purporting that the holder thereof is entitled to demand any value denoted thereon."

By an Order in Council dated 18th March, 1937, a new type of threepenny piece was made legal tender for sums not exceeding two shillings. This coin, duodecagonal in shape, weighs 105 grains, and is an admixture of copper, nickel, and zinc.

The Coinage Act, 1946, substituted cupro-nickel for silver coinage, containing three-quarter parts nickel and one-quarter part copper.

By 24 and 25 Vict. c. 99, Section 17, no tender of payment in money made in gold, silver, or copper coin, defaced by being stamped with any name or words thereon, whether such coin shall or shall not be thereby diminished or lightened, shall be allowed to be a legal tender.

The gold coinage made at the Mints of Sydney, Melbourne, and Perth (Western Australia) was declared legal tender in the United Kingdom by Royal Proclamation in the years 1866, 1869, and 1897 respectively.

Pre-Victorian sovereigns and half-sovereigns are not now legal tender. They were called in by the Coinage Act of 1889.

Silver coins dated before 1816 and copper coins before 1861, are not legal tender.

A creditor is not obliged to give change when notes are offered to a greater value than the amount of the debt.

NOTES. By 3 & 4 Will. IV, c. 98, 1833, Section 6: "A tender of a note or notes of the Bank of England, expressed to be payable to bearer on demand *shall be legal tender for the payment of any amount*, so long as the Bank of England shall continue to pay on demand their said notes in legal coin; provided always, that no such note or notes shall be deemed a legal tender of payment by the governor and company of the Bank of England, or any branch bank of the said governor and company; but the said governor and company are not to become liable or be required to pay and satisfy, at any branch bank of the said governor and company, any note or notes of the said governor and company not made specially payable at such branch bank; but the governor and company shall be liable to pay and satisfy at the Bank of England in London all notes of the said governor and company or of any branch thereof." The words in italics were substituted by the Currency and Bank Notes Act, 1928, for words in the Act of 1833 which provided that the notes of the Bank of England shall be legal tender for all sums above £5.

Since 30th April, 1945, Bank of England notes of denomination above £5 are no longer legal tender. Such notes have been called in, but are still exchangeable for legal tender at the Bank of England.

By the Gold Standard Act, 1925, Section 1, s.s. 1, until otherwise provided by Proclamation, the Bank of England shall not be bound to pay any note of the Bank in legal coin, and the notes shall not cease to be legal tender by reason that the Bank do not continue to pay the notes in such legal coin. (See GOLD STANDARD ACT, 1925.)

By the Currency and Bank Notes Act, 1928—

"1. (3). The following provisions shall have effect so long as s.s. (1) of Section 1 of the Gold Standard Act, 1925, remains in force—

"(*a*) notwithstanding anything in the proviso to Section 6 of the Bank of England Act, 1833, bank notes for one pound or ten shillings shall be deemed a legal tender of payment by the Bank or any branch of the Bank, including payment of bank notes;

"(*b*) the holders of bank notes for five pounds and upwards shall be entitled, on a demand made at any time during

office hours at the head office of the Bank or, in the case of notes payable at a branch of the Bank, either at the head office or at that branch, to require in exchange for the said bank notes for five pounds and upwards bank notes for one pound or ten shillings."

"(5). Notwithstanding anything in Section 8 of the Truck Act, 1831, the payment of wages in bank notes of one pound or ten shillings shall be valid, whether the workman does or does not consent thereto."

Notes of £5 of the Bank of England may circulate in Scotland and in Northern Ireland, but they are not a legal tender in those countries (8 & 9 Vict. c. 38, 1845, Section 15, and c. 37, 1845, Section 6). But, by the Currency and Bank Notes Act, 1928, Bank of England notes for £1 and 10s. shall be current and legal tender in Scotland and Northern Ireland as in England. (Section 1 (1) (*c*).)

In Jersey, legal tender is the same as in England; in Guernsey and the other Channel Isles the same applies together with the notes of the States of Guernsey.

The notes of banks of issue in Scotland and Northern Ireland are not legal tender.

Cheques and bills do not form a legal tender. (See PAYMENT BY.)

LEGATEE. The person to whom "personal" property (see PERSONALTY) is left, or bequeathed, in a will, is called a legatee. The person who takes all the personal property remaining after all legatees have received their shares, is called the residuary legatee.

LESSEE. The person in whose favour a lease is granted. (See LEASEHOLD.)

LESSOR. The person who grants a lease. (See LEASEHOLD.)

LETTER OF ALLOTMENT. The letter which is sent by a company to an applicant for shares, stocks, or bonds which are being offered to the public, stating what has been allotted to him and requesting payment of the amount due to be paid thereon. (See APPLICATION FOR SHARES.)

The following is the standard form of allotment letter as recommended by the Council of the Institute of Bankers—

Allotment Letter with receipts for amount due on allotment and for payment in full, size 13 in. by 8½ in., the dockets being exactly a fourth of the total length.

ALLOTMENT LETTER.

No.....

Space for Name and Address of Allottee, to be filled in by the Company

IMPERIAL TRUST, LIMITED,
983 Cornhill,
London, E.C.3.

....., 19

Issue of ..... shares of

Sir or Madam,

In response to your application, you have been allotted $\frac{\text{Shares of £.... each}}{\text{£.... Stock } \textit{or Bonds}}$ of the IMPERIAL TRUST, LIMITED.

The amount payable on Application and Allotment (viz., per Share) is . . . £
per cent)
You have already paid . .
Making amount due from you on Allotment . . . £
or
Making amount due to you, for which a cheque is enclosed . £

Payment of the amount due from you should be made on or before the as directed below.

[Further particulars as to Payment in Full, Instalments and other matters can be inserted as required.]

By Order of the Board,

Secretary.

This Form, with remittance, must be forwarded entire to the Company's Bankers, the Bank of London Limited, 83 Lombard Street, London, E.C.3, who will return it duly receipted. It should then be carefully preserved to be exchanged for the relative Certificate (*or Scrip*) in due course. Notice of such exchange will be given by the Company (by advertisement).

Cheques should be made payable to

BEARER and crossed *Not Negotiable.*

If altered from "Order" to "Bearer" the alteration *should be signed by the Drawer.*

Received *for account of the* IMPERIAL TRUST, LIMITED, *payment in full on the above-mentioned Shares. Stock.* *For* **BANK OF LONDON LIMITED,** ..... *Cashier.* *Date*.....19 .	**Received** *for account of the* IMPERIAL TRUST, LIMITED, *the amount due on allotment.* *For* **BANK OF LONDON LIMITED,** ..... *Cashier.* *Date*.....19 .
No..... PAYMENT IN FULL. **IMPERIAL TRUST, LIMITED.** ..... £..... *Date*.....19 .	*No*... ALLOTMENT **IMPERIAL TRUST, LIMITED.** ..... £..... *Date*.. 19

(See STANDARD FORMS.)

Allotment letters do not form a security for an advance, though they may in some cases be held temporarily and exchanged for the certificates when ready, when a transfer of the shares can be taken in the usual way. When an underwriter takes up shares which have not been subscribed for by the public, he may receive allotment letters in blank. These are sometimes lodged with a bank as a temporary security, and when the underwriter obtains purchasers their names are filled in and the allotment letters released against payment.

In the case of an issue of new shares, a shareholder may agree to accept the number of new shares provisionally allotted to him, by signing a form of acceptance, or he may renounce his rights to the shares by signing a form of renunciation. He may renounce in favour of another person, who should sign the form of acceptance, or he may sell his rights through a broker. (See LETTER OF RENUNCIATION.) A stamp is not required on the form of acceptance.

An allotment of stock or shares or bearer bonds is often payable by instalments. (See INSTALMENT ALLOTMENT.)

Stamp duty on Allotment Letters was abolished by the Finance Act, 1949.

Receipts upon a duly stamped letter of allotment were exempt from duty. (See Exemption 11 under heading RECEIPT.) Now that allotment letters are exempt from stamp duty, receipts on such instruments presumably require stamping as such. (See ALLOTMENT, COMPANIES.)

LETTER OF APPLICATION. When an issue of shares is offered to the public, a person who wishes to subscribe for some of them sends in a letter of application stating how many he requires and enclosing at the same time a cheque for the amount payable on application. If his application is not successful, the money is returned, but if successful he receives in due course a letter of allotment. (See APPLICATION FOR SHARES, LETTER OF ALLOTMENT.)

LETTER OF ATTORNEY. (See POWER OF ATTORNEY.)

LETTER OF CREDIT. A letter of credit is a document issued by a banker authorising the banker to whom it is addressed to honour the cheques of the person named to the extent of a certain amount and to charge the sums to the account of the grantor; or it may be worded so as to authorise the person to whom it is addressed to draw on demand, or at a currency, upon the banker issuing the letter, and the grantor undertakes, in the letter, to honour all drafts drawn in accordance with the terms of the credit. The letter states the period for which the credit is to remain in force, and it should be indorsed with particulars of all drafts drawn under the credit. When a letter of credit is issued, the amount is debited to the customer's account and credited to a "Letters of Credit" account. If not debited to his current account on issue it may be necessary, if the customer's account is overdrawn, to require security in order to protect the bank against its undertaking in the letter of credit to honour drafts drawn thereunder. The amount of the letter of credit is passed to two contra accounts in the General Ledger and reversing entries are made whenever a payment is made under the credit, so as to enable the banker at any time to ascertain his total liability under letters of credit.

A circular credit is addressed to all correspondents of a bank, and a direct credit is addressed to a specified correspondent.

When the authority to draw a bill is printed upon the margin of the form which is to be used for drawing the bill, the document is called a marginal letter of credit. The authority portion of the document refers to the bill portion in such words as "I authorise you to draw the annexed bill." The two parts of the instrument must not be separated.

Where a banker is authorised to pay cheques under a letter of credit, he must see that the signature of the drawer is correct and that the terms of the letter are strictly observed. He should be furnished with a specimen of the signature of the person who is entitled to draw the money, and will be responsible for any loss if he pays on a forged signature.

A letter of credit is not a negotiable instrument.

The following is a form of letter of credit—

BRITISH BANK, LTD.

No..... LONDON.....19.....

To

The Correspondents

of

Gentlemen,

The Bearer of this letter.....

.....

whose signature is to be found in our Letter of Indication is hereby authorised to draw on this Bank at sight or by short exchange for £.....

say.....

to which extent we hereby engage to honour his drafts.

All drafts negotiated under this credit are to be indorsed on the back of this letter.

This credit is in force for.....months from this date.

We are, Gentlemen,

Your obedient Servants,

£.....Sterling.

This letter is to be returned with the last draft.

All payments made under this letter must be indorsed below—

Paid by	Amount in Letters	Numerals

For the purpose of stamp duty a letter of credit is treated as a bill of exchange (see Section 32, Stamp Act, 1891, under heading BILL OF EXCHANGE,) but a letter of credit granted in the United Kingdom, authorising drafts to be drawn out of the United Kingdom payable in the United Kingdom is exempt from duty (see Exemption 4, under BILL OF EXCHANGE.) (See CIRCULAR LETTER OF CREDIT.) (For credits covering shipments of goods, see DOCUMENTARY CREDITS.)

LETTER OF DEPOSIT. (See MEMORANDUM OF DEPOSIT.)

LETTER OF HYPOTHECATION. Where a banker holds merchandise or the documents of title thereto in pledge and he parts with the possession thereof to (usually) the pledgor in order that the latter may dispose of the goods, he safeguards himself against any loss of his rights as pledgee resulting from delivery of possession by getting the pledgor's signature to a letter of hypothecation or letter of trust. Speaking of the meaning of the term hypothecation, Mr. H. C. Gutteridge says in *Bankers' Commercial Credits*, at page 75: "When employed in connection with banking transactions, it may, so far as the goods are concerned, be regarded as a conversion of the possession of the owner of the goods into that of a bailee from the pledgee, or as an equitable agreement by the owner to create a pledge at a future date." (See TRUST LETTER.) In some quarters the term is applied to a form of pledge which covers not only goods which, or the documents of title to which, are in the lender's hands but also goods or documents of title which are to be deposited in the future.

LETTER OF INDICATION—LETTER OF IDENTIFICATION. The letter which accompanies circular notes or a circular letter of credit. The letter is signed by the banker issuing it, and the person to whom it is given places his signature upon it, as soon as received. When any of the circular notes are presented for payment, or drafts are drawn under a letter of credit, the paying agent should insist on the production of the letter of indication, and assure himself that the indorsement on the notes or signature on the drafts corresponds with the signature of the legitimate holder on the letter of indication. The letter is addressed to the correspondents of the grantors and, when accompanying circular notes, supplies the numbers of the notes which have been issued to the holder. The notes should not be indorsed except in the presence of the banker from whom payment is required, and the notes should be carried apart from the letter of indication, so that if they are lost the finder will not be able to make any use of them in the absence of the letter. Letters of indication for use on the Continent are usually in French.

The following is a specimen of a letter of indication to accompany circular notes—

No. Date 19 .

To Messieurs the Bankers
mentioned in this Letter of Indication.

GENTLEMEN,

We beg to introduce to you
who is furnished with our Circular Notes
numbered payable at our Head Office, London.

We request that you will purchase any of these notes presented to you for payment, at your current rate for demand drafts on London, on their being indorsed in your presence in accordance with the specimen signature below.

This Letter of Indication should be retained by the holder until all the Circular

Notes have been cashed, when it is to be surrendered to the Banker cashing the last Note.

Your obedient Servants,

Signature of Bearer.

The following is a specimen of a letter of indication to accompany a letter of credit—

No. Date 19 .

To Messieurs the Bankers
mentioned in this Letter of Indication.

GENTLEMEN,

This letter will be handed to you by
in whose favour we have issued our Letter of Credit No. . Recommending
to your kind attention, and referring you to specimen signature below,

Your obedient Servants,

Specimen Signature.

(See CIRCULAR LETTER OF CREDIT, CIRCULAR NOTES.)

LETTER OF LICENCE (*re* BANK CHARTER ACT). This is the name given to the official letter of authority sent by the Government to the Bank of England, on the latter's application, during the crises of 1847, 1857, and 1866, permitting the Bank to break the Act of 1844 and increase their issue of notes upon securities. In 1857 the Bank took advantage of this authorisation, but in the two other years mentioned they did not require to resort to it, public confidence being restored without. On the outbreak of war with Germany in 1914, the Bank was empowered to suspend the Act, but the authority was not acted upon. (See particulars under BANK CHARTER ACT.)

LETTER OF LICENCE (DEBTOR AND CREDITOR). An agreement between a debtor who is in difficulties, and his creditors, under which the creditors agree not to enforce their claims for a certain time, and, in the meantime, to allow him to continue his business. (See DEED OF ARRANGEMENT.)

LETTER OF LIEN. A debtor frequently gives a banker, as security for an advance, a letter of lien or charge upon goods in the hands of a third party. In the case of *In re Hamilton, Young & Co.*, [1905] 2 K.B. 772, where a letter of lien over goods in the hands of certain bleachers, accompanied by their receipt, was given, it was held that the letter was a document used in the ordinary course of business as a proof of the control of goods. The letter should empower the banker to sell, in default of payment of the debt.

LETTER OF REGRET. Upon a new issue of shares, the applicants who are not successful in obtaining an allotment receive a "letter of regret" announcing the fact and returning their money.

LETTER OF RENUNCIATION. Where shares have been allotted to a person and he does not wish to keep them, he may renounce them in favour of another person. The document by which this is effected is called the Letter of Renunciation. (See RENUNCIATION.)

Stamp duty on letters of renunciation was abolished by the Finance Act, 1949.

Below is given the standard form of renunciation as recommended by the Council of the Institute of Bankers. (See STANDARD FORMS.)

IMPERIAL TRUST, LIMITED.

Space for Name and Address of Shareholder, to be filled in by the Company	No..... Present holding..... Shares Entitled to a *pro rata* allotment of .....Shares.
Joint Shareholders (if any) Names only.	....

FORM OF RENUNCIATION AND NOMINATION,

to be signed by the Shareholder only if the

Rights are renounced.

To the Directors of the

IMPERIAL TRUST, LIMITED.

I/we hereby renounce my/our right to the above-mentioned new Shares and nominate

Name (in full), Address and Occupation of Nominee. (If lady state whether spinster, wife, or widow.) .....
.....
.....

to have all the benefits of the offer contained in your Circular dated

(*Signature of Shareholder*)*

Date.....19 .

*Instructions as to Signatures of Joint Holders.

LETTERS DESPATCHED BOOK. Under each day's date is given a complete list, with, addresses, of all letters despatched by post and the amount of the postage on each. The time at which the letters are posted is given,

and the initials appended of the persons who actually posted them. Many banks insist upon the letters being taken to the post in a locked bag, by two persons. Prior to the letters being put into the bag, they are usually examined by a senior clerk to see that all are in order.

The stock of postage stamps on hand is balanced periodically by means of the money column in the letters despatched book.

LETTERS OF ADMINISTRATION. Where a person dies and leaves no will, the Probate Registry will, on application, appoint a person, the administrator, to wind up the estate, and will grant to him "Letters of Administration," that is, a document empowering him to administer the estate of the deceased. If the deceased person left a will but did not nominate any person to act as executor, or if the persons nominated are dead or incapable of acting, e.g. infants or lunatics, or if the persons nominated renounce Probate, that is, they decline to act as executors, "Letters of Administration with the Will annexed" will be granted by the Probate Registry. The administrator in such a case (called an administrator *cum testamento annexo*) must carry out the terms of the will just like an executor.

If the balance of a deceased's account is very small, some bankers pay it, on receiving a satisfactory indemnity, without production of Letters of Administration. There is no duty payable on an estate which is under £2,000. (See under DEATH OF CUSTOMER.)

Where Letters of Administration are revoked, the banker is protected in any payments he may have made upon the Letters. The sections of the Act relating to this point are quoted under PROBATE (*q.v.*). In *Hewson* v. *Shelley* (1914), 110 L.T. 785, where real property had been sold by an administrator and a will was subsequently found, the Master of the Rolls said, "the person for the time being clothed by the Court of Probate with the character of legal personal representative is the legal personal representative and enjoys all the powers of a legal personal representative unless and until the grant of administration is revoked or has determined. If this view is not right no person could safely deal with, or accept a title from, an administrator, for it is impossible to prove that there may be no will." See the provisions of the Administration of Estates Act, 1925, under PERSONAL REPRESENTATIVES. (See ADMINISTRATOR, ADMINISTRATOR DE BONIS NON.)

LETTERS RECEIVED BOOK. All letters received are entered in this book. It is ruled to show the date of the receipt, person from whom received, and the subject-matter. A column is also usually provided to show by whom dealt with.

LEX MERCATORIA. (See LAW MERCHANT.)

LIABILITIES (WAR-TIME ADJUSTMENT) ACT, 1941. This Act provided for the adjustment and settlement of the affairs of persons financially affected by the war of 1939. It applied to any private individual, individual partner, firm or private limited company carrying on business for a profit who was in serious financial difficulties owing to war circumstances.

Liabilities adjustment officers were appointed for each county court district to help persons to whom the Act applied, and such officers had to approve any scheme approved by the creditors of the applicant. A non-assenting creditor could appeal to the Court and the Court could vary or revoke any scheme put forward. A register of Liabilities Adjustment Schemes was set up. Where the Court was satisfied that a *prima facie* case had been made out, it could make a Protection Order which prevented proceedings being instituted against a debtor or his property without the consent of the Court.

If the Court was satisfied that the grounds for making an application were in order, it could make a Liabilities Adjustment Order which provided for the payment of proveable debts and realisation of a debtor's property. The Order also provided for the maintenance of the debtor and his family; for the preserving of the debtor's home, furniture, etc.; for postponing payment of debts, and for postponing realisation of property.

When a debtor had paid in full or complied with the Liabilities Adjustment Order, he could be discharged and released from all proveable debts.

The facilities provided by the Act have been availed of to a comparatively small extent.

LICENCE TO ASSIGN. Where a lessee is unable to assign, demise, or sublet the leasehold land or premises without the licence or consent in writing of the lessor or his agent, the necessary licence, when obtained, may be in the following form: "I hereby license and authorise to assign his estate and interest in the piece or parcel of ground, etc., unto for the residue of the term of years, etc."

A licence to sub-demise by way of mortgage shall not be unreasonably refused. (Law of Property Act, 1925, Section 86. See under MORTGAGE.) (See LEASEHOLD.)

LICENSED PROPERTY. In considering the value of licensed property, it should be remembered that the purchase money named in the last deed of conveyance may have been an inflated price and therefore may not be much of an indication as to the present value. The rent of a public-house, when tied to a brewery company, cannot always be taken as a correct basis upon which to estimate the value; the rent may be a comparatively small one, in view of all purchases having to be made from the brewery. But where the house is owned privately and is free, the rent may be taken as a fair basis, because the owner does not get anything from the trade of the house, and looks to the rent for a return on his capital invested in the purchase of the house.

A licence is liable to be taken away by the licensing magistrates. An insurance policy should therefore be obtained to insure against loss by depreciation in value of the interest of the insured in the premises by the forfeiture of, or refusal to renew, the licence. The policy covers any such loss up to a specified amount.

A satisfactory method is for two policies to be issued (one premium covering both). One of them (called a general policy) is made out in the name of the bank and contains a clause that if the licence shall be forfeited or refused renewal by the Licensing Justices or other authority, the company will pay to the insured all loss that the insured may sustain by the depreciation in value of the interest of the insured in the premises by the forfeiture of or the refusal to renew the said licence; Provided that, if the insured shall be entitled to obtain the payment of compensation under the provisions of any Act of Parliament in respect to the refusal to renew the licence, no claim shall arise under this policy. The other policy (called the licensed victualler's policy) is in the name of the licence holder and the terms are similar to the bank's policy, with the exception that the insurance company agrees to pay the loss that the insured may sustain only if the licence shall be forfeited or refused renewal "for any reason beyond the control of the insured." Each policy is for the same amount, but a condition on the victualler's policy is that the amount payable under his policy shall not exceed the difference between the amount actually paid or payable under the other policy and the sum insured under his policy.

In a banker's mortgage of licensed property there are several special features. The mortgagor demises, conveys, and assigns to the bank the lands and hereditaments, the goodwill of the business, the benefit of magistrates' certificates and excise licences, and any money to which the mortgagor may become entitled as compensation for the refusal to renew the licence. The mortgagor covenants that he will keep the licence insured against forfeiture or non-renewal, that he will continue to keep the premises open as a licensed house, that he will not do anything whereby the business or the goodwill may be liable to be prejudicially affected, etc.

LIEN. Lien is the right to retain property belonging to another until a debt due from the latter is paid. This is a possessory lien as opposed to a maritime lien (*q.v.*).

A possessory lien is of two kinds: particular and general. A particular lien is the right to retain goods in respect of which the debt was incurred. For example, a carrier has a lien on goods entrusted to him for transport; a watchmaker has a lien on articles left for repair in respect of the cost thereof. A general lien is a right of retainer not only for a debt incurred for particular goods but for the general balance due. Thus bankers, solicitors, stockbrokers, in certain circumstances may have a lien on clients' securities, etc., for all moneys due.

A banker's lien is a special form of general lien, for it includes a right of sale after reasonable notice. It is the right of a banker to retain such of his customer's property as comes into his hands in the ordinary course of business as a banker; it is an implied pledge.

In *Brandao* v. *Barnett* (12 Cl. & Fin. 787), Lord Campbell stated that "bankers have a general lien on all securities deposited with them as bankers by a customer, unless there be an express contract, or circumstances that show an implied contract, inconsistent with lien."

A lien does not attach to any instrument which the banker knows is not the property of his customer.

The lien is not affected by reason that negotiable securities do not belong to the person depositing them, if the banker is unaware of the fact.

A banker has no lien on securities which are deposited for some particular purpose. For example, it has been held that where a

conveyance of two separate properties was deposited, with a memorandum of charge upon only one of the properties, the banker had not a general lien upon the other property. (*Wylde* v. *Radford* (1863), 33 L. J. Ch. 51.)

Bills and documents left for collection are part of a banker's ordinary business, and he has a lien upon them.

Section 27 (3) of the Bills of Exchange Act, 1882, provides: "Where the holder of a bill has a lien on it, arising either from contract or by implication of law, he is deemed to be a holder for value to the extent of the sum for which he has a lien." If a bill has been transferred absolutely to a banker he is entitled to the full amount of it, but if he has merely a lien upon it his interest is limited to the extent of that lien.

In the case of cheques, bills, or promissory notes subject to the lien, it is the duty of the banker to present them in due course, and, in case of dishonour, to give the appropriate notice.

Where a banker negotiates a bill with shipping documents attached he has probably the right, should the occasion arise, to realise the goods to the extent of the amount of the draft, but such action might lead to tedious and costly legal proceedings. The proper course is to insist upon a letter of hypothecation in every case.

When a banker has discounted bills for a customer, the banker has no lien on any credit balance on the account with respect to the contingent liability on the bills not yet due. "There would be no use in discounting the bills" if the banker had a lien on the cash balance. (*Bower* v. *Foreign and Colonial Gas Co.* (1874), 22 W.R. 740.) But a contingent debt is provable in bankruptcy, and a lien on a credit balance can then be claimed. (See PROOF OF DEBTS, SET-OFF.)

Where bearer bonds are left with a banker in order that the coupons may be cut off and collected by him, Sir John R. Paget considers that a lien probably attaches to the bonds, but no lien would attach if left for safe custody, and the customer looked after the coupons himself. (See *The Law of Banking*.)

The securities over which a banker has a lien are understood to be principally negotiable securities. "What is intended is such securities as promissory notes, bills of exchange, exchequer bills, coupons, bonds of foreign governments, etc.; and the Courts have held that if such securities are deposited by a customer with his banker, and there is nothing to show the intention of such deposit one way or the other, the banker has, by custom, a lien thereon for the balance due from the customer." (Kindersley, V.-C., in *Wylde* v. *Radford* (1863), 33 L. J. Ch. 51). In *Davis* v. *Bowsher* (1794), 5 T.R. 488, Lord Kenyon said: "Whenever a banker has advanced money to another, he has a lien on all the paper securities which come into his hands for the amount of his general balance."

In *re United Service Company* (1870), 6 Ch. App., 212, where railway share certificates were deposited with a bank and a commission was charged for collection of the dividends, it was held that the certificates came into the bank's custody in the ordinary course of their business as bankers, that they were deposited with the bank by a customer of the bank, and that such deposit was made under such circumstances as would have entitled the bank to a lien upon them for their general banking account. Several authorities, however, express doubts as to certificates being the subject of a banker's lien.

A conveyance of land is not subject to a banker's general lien, but where deeds are deposited with the intention of creating a security, without any memorandum of charge, they form an equitable mortgage by deposit. (See, however, Heber Hart's opinion below.)

A banker has (in the opinion of some authorities) no lien upon articles left for safe custody, as the circumstances of the deposit are inconsistent with lien. A customer may, however, sign an agreement (stamp 6d.) giving the banker a lien on securities left for safe custody.

Sir John Paget (in *The Law of Banking*) expresses the view that a banker's lien "only attaches to such securities as a banker ordinarily deals with for his customer, otherwise than for safe custody, when there is no question or contemplation of indebtedness on the part of the customer."

An opposite opinion is expressed by Heber Hart, K.C., in the Gilbart Lectures, 1923 (No. 4), where he says, "It has often been said—indeed it is perhaps the current view—that when things are delivered to a banker for safe custody the circumstances and object of the deposit prevent the lien from attaching. It seems to me difficult to reconcile this view with the principles underlying this branch of the law, and I am not satisfied that it has really been impregnably established by the authority of the decided cases." In that lecture Mr. Hart holds that

a lien attaches, in the absence of any express or implied agreement to the contrary, to any kind of document or other property placed in the banker's hands by the customer and of which the customer is the owner.

A banker has no lien upon a security handed to him for the purpose of selling it through a stockbroker. (*Symons* v. *Mulkern*, (1882), 46 L.T. 763.)

In *Re Bowes*; *Earl of Strathmore* v. *Vane* (1886), 33 Ch.D 586, where a customer deposited a life policy for £5,000, with a memorandum stating that it was to form a security to the extent of £4,000 with interest, commission, and other charges, it was held that the banker could not claim more on the policy than the £4,000 and charges, as limited in the charge. Mr. Justice North said: "It is said that the bankers have a banker's lien; that Bowes was their customer, and handed over to them the policy as security, that they had it in their hands and were entitled to hold it, not only for the £4,000, interest and commission, for which they had a written agreement, but that in addition they had a further right as bankers to hold it in respect of the rest of his debt to them; or in other words they claim a right under the special contract in writing and also under an implied contract. It appears to me that that is inconsistent with the terms of the agreement, which is for a security for a sum not exceeding £4,000 principal and no more, with interest and commission, and that when the contract says in so many words that the charge is for a sum not exceeding £4,000, the charge is limited to that amount. . . . It has not been suggested that the sale was wrong in any way; and it may well be that bankers who have a power of selling securities deposited, when they have sold, and have clear money in their hands after satisfying the charge, may be entitled to say they will set off that money against further sums due to them; but that seems to me a totally different case from the present, where the security is of a wholly different nature, and the bank had no power of sale. It is quite true that, after a demand for payment had been made, the bank might have insisted on having a mortgage with a power of sale. No such demand was made or mortgage given, the bank never had a power to sell and convert the policy into money. . . . It seems to me that the express terms of this deposit were that sums not exceeding £4,000 were to be paid out of the policy moneys, and it would be inconsistent with that, in the absence of any additional agreement, to allow the bank to hold the policy for something more."

Where a customer has a credit balance on one account and is owing money on another, the banker may, after giving reasonable notice, set off one balance against the other. This right, which is subject to limitations, is sometimes referred to as a banker's "lien," but the more exact term is "set off." (See SET-OFF.)

The deed of settlement, or articles of association, of a banking company may provide that the partly paid shares of the members shall be subject to a lien in favour of the bank for all moneys due to the bank in respect of any call or debt due from the shareholder, whether alone or jointly with any other person, to the bank. It has been held that such a power gives the bank a lien upon the dividends, as well as upon the shares.

The clause with regard to a lien on partly paid shares may take the following form: "The company shall have a first and paramount lien and charge available at law and equity on every share (not being a fully paid share) of every person who is the holder or one of the joint holders thereof, for all debts and liabilities on any banking or other account whatsoever, and for all other debts, liabilities, and sums of money due or to become due from him, either alone or jointly with any other person, whether a member or not, to the company at any time whatsoever, whilst he is the registered holder, or one of the registered holders, of the share.

"The directors may sell for the benefit of the company, any shares on which the company shall have such lien as aforesaid, without any further authority on the part of the holder or holders thereof, in order to obtain satisfaction or payment of all or any part of such debts, liabilities, or sums of money: Provided that no such sale shall take place without one calendar month's notice to the holder or holders of the shares in accordance with the articles relating to notice, and that when any shares shall be so sold, the company shall credit such holder or holders in account with the price received by the company as the actual price of the shares sold: Provided also that the register of shares shall be conclusive evidence of the title of a subsequent holder of any share which the directors shall have sold as aforesaid; and the remedy of any shareholder in respect of any irregularity in the

enforcing of any lien, or alleged lien, shall be in damages against the company only."

A company's articles of association may give a lien on a member's shares for any debt due by him to the company, and a lien on shares held jointly for debts due by the separate holders. In companies, however, which have adopted Table A of the Companies Act, the lien is restricted to partly paid shares.

Table A does not provide for a lien on fully-paid shares, and a condition precedent to a quotation in the London Stock Exchange Official List is that fully paid shares shall be free from lien.

In *Hopkinson* v. *Mortimer, Harley & Co., Ltd.*, [1917] 1 Ch. 646, where the articles of association of the defendant company provided that it should have a lien on its shares for debts due by the registered holders of such shares to the company, and that the Board might by resolution forfeit the shares, it was held that such power of forfeiture was *ultra vires* and invalid on the grounds that its exercise would amount to a reduction of capital, which would be illegal unless sanctioned by the Court, and would operate as a clog on the equity of redemption. In view of this decision, articles of association should prescribe a sale of the shares as the method of enforcing such a lien. Although shares cannot be forfeited for failure to pay a debt due (otherwise than in respect of the shares themselves) by a shareholder to the company, a company's articles of association may give power to forfeit shares if a shareholder fail to pay any call or instalment due on the shares. A provision to this effect is included in Table A.

A limited company cannot purchase its own shares without the sanction of the Court.

Where shares in another banking company are offered as security it should be remembered that that company will probably have a first lien upon its own shares. But in the case of the *Bradford Banking Co.* v. *Briggs & Co.* (1886), 12 App. Cas. 29, where the articles of association of a company registered under the Companies Act, 1862, provided that the company should have "a first and permanent lien and charge, available at law and in equity, upon every share for all debts due from the holder thereof" it was held by the House of Lords, reversing the decision of the Court of Appeal, that notice to the company of the deposit of certificates with the bank was not a notice of a trust within the meaning of the Companies Act, 1862, Section 30 (now Section 117 of the Companies Act, 1948, see below), and that the bank, by giving notice of the deposit, did not seek to affect the company with notice of a trust, but only to affect the company (which was a trading company) in their capacity as traders with notice of the interest of the bank. It was also held that the company could not in respect of moneys which became due from the shareholder to the company after notice of the deposit with the bank, claim priority over advances by the bank made after such notice.

By the Companies Act, 1948, Section 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."

The position, therefore, is that, under the above Section, the company, as custodian of the register, must not enter therein any notice of trust, but as a trading company, which itself purports to take a benefit in the shares by way of lien, the company is bound to observe a notice of charge given by a bank.

In *Mackereth* v. *Wigan Coal and Iron Co., Ltd.*, [1916] 2 Ch. 293, it was held that where partly paid shares of a company, whose articles of association contain a lien clause, are held by trustees upon a trust of which the company has had notice, the company cannot exercise its lien by retaining dividends or selling the shares in order to recover a debt due to it by one of the trustees.

When a bank's partly paid shares have been transferred into the names of the personal representatives of a deceased shareholder in such circumstances as to constitute notice to the bank that the shares are held in a fiduciary capacity, it follows, from the above case, that the bank could not exercise its lien on the shares in order to recover money advanced to the representatives for purposes not authorised by the trust.

A vendor has a lien upon the land for any unpaid part of the purchase money as against a subsequent purchaser with notice; but "a receipt for consideration money or other consideration in the body of a deed, or indorsed thereon, shall, in favour of a subsequent purchaser, not having notice that the money or other consideration thereby acknowledged to be received was not in fact paid or given, wholly or in part, be sufficient evidence of the payment or giving of the whole amount thereof." (Law of Property

Act, 1925, Section 68 (1).) (See LIEN LETTER, SET-OFF, TITLE DEEDS.)

LIEN LETTER. When an arrangement is made by which a certain amount in a customer's credit account is to be regarded as a security for an advance to him on another account, an agreement (stamped 6d.) not to reduce the balance below the amount agreed upon, should be signed by the customer. The document should also authorise the banker to refuse payment of any cheques which would reduce the balance on the credit account below the stipulated amount and to combine the two accounts at any time without notice. A similar agreement should be signed when a customer's credit balance, or part of it, is to be held as a security for an advance to another customer.

LIFE ASSURANCE. (See LIFE POLICY.)

LIFE INTEREST. An interest in a property for life only. (See LIFE TENANT, SETTLED LAND.)

LIFE POLICY. Life assurance has been defined as "a contract by which the insurer in return for a lump sum or a periodical payment undertakes to pay to the person for whose benefit the insurance is effected or to his executors, administrators, or assigns, a certain sum of money or an indemnity on the happening of a given event, or on the death of the person whose life is insured." The contract is embodied in a document called a policy.

As people have become increasingly "insurance minded," so have the types of policy to cover a wide range of cases increased. The following are some of the kinds of policy usually met with—

WHOLE LIFE POLICY. Payable only on the death of the assured.

ENDOWMENT POLICY. Payable on the attainment of a stipulated age by the assured or at a specified future date or at previous death. A rarer kind of endowment policy is where the sum assured is payable only if the assured survives a given date.

SHORT TERM POLICY. Payable only if death occurs within a specified period.

SINGLE PREMIUM POLICY. Where one premium only (usually a large sum) is payable when the policy is taken out.

PARTICIPATING POLICY. A "with profit" policy where the assured receives a share of the profits of the assurer, known as a bonus, usually based on a quinquennial valuation.

NON-PARTICIPATING POLICY. A "without profit" policy.

JOINT LIVES POLICY. Effected on the lives of two or more people and payable on the first death.

LAST SURVIVOR AND SURVIVORSHIP POLICY. A policy on joint lives but payable on the death of the last survivor.

PAID UP POLICY. A policy on which no further premiums are payable.

CLOSED FUND POLICY. A policy issued by an office which has been absorbed by another company, no new business being taken in respect of the assets of the merged office.

TONTINE POLICY. Where no bonus is payable if death occurs before the expiration of a specified period, called the tontine period.

POLICY WITH INCREASING OR DECREASING PREMIUMS. Where premiums are payable on an ascending or descending scale according to the duration of the policy.

Insurable Interest.

By the Gambling Act, 1774, no insurance shall be made by any person on the life of any person, unless he has an insurable interest in that person. Such an interest must be a pecuniary one. A man has an insurable interest in his own life; a wife has an insurable interest in her husband and a husband in his wife; a creditor may insure his debtor to the amount of the debt; a father has not necessarily an insurable interest in his son, nor the son in the father; a company has an insurable interest, for example, in a director on whose personal ability the company depends. An assignee of a policy need not have an insurable interest.

Surrender Value.

A life office will on request quote a surrender value for a policy, i.e. the amount which it will give in consideration of the surrender of the policy. Usually a policy carries no surrender value until three years' premiums have been paid. Where a policy carries a risk of death within a specified period (a short-term policy) it cannot be surrendered for cash. The following is a rough guide as to surrender values—

Policy in Force	*Surrender Value*
5 years	About 30% of premiums paid
10 ,,	,, 35% ,, ,,
15 ,,	,, 40% ,, ,,
20 ,,	,, 45% ,, ,,
25 ,,	,, 50–55% ,, ,,
30 ,,	,, 55–65% ,, ,,

Endowment policies have a greater surrender value than whole life policies. Some

life offices, particularly Colonial and Dominion companies, print a table of surrender values on the policy.

Security.

Before accepting a life policy as security it should be carefully perused to see if any onerous restrictions are imposed on the assured, relating to such matters as foreign residence, air travel, etc. Sometimes there is a suicide clause, providing that the policy shall be void if the assured dies by his own hand within six months of the contract of assurance. It is usual to provide in such cases, however, that the rights of assignees for value shall not be affected. If a life is accepted without medical examination, sometimes only a partial amount of the sum assured is payable if death occurs within a specified period.

It is necessary to see that the policy-holder has power to deal with his interest. Industrial policies are usually unassignable without the consent of the company.

The age of the assured should be admitted on the policy, for otherwise if the age has been understated on the proposal form, the company would be entitled to deduct from the policy moneys due the difference, with interest, between the premiums paid and the premiums which ought to have been paid. An insurance company before indorsing a policy "age admitted" will require production of the birth certificate or certificate of baptism giving the date of birth. Where these are not available, a certified extract from a Bible or a statutory declaration will be required.

The policy should be examined to see that all interested parties join in the security. Where a policy is not payable to the assured or his personal representatives but to a third party who is alive on the maturity of the policy or who survives the assured, such party, if of full age, must join in the charge. Under the Married Women's Property Act, 1882, Section 11, a policy on the life of a husband for the benefit of his wife and/or issue creates a trust in favour of the beneficiaries. Where no trustees are appointed, the husband is trustee. Where a husband insured his life for the benefit of his wife under the above Act and his wife predeceased him, it was held on appeal that the wife had a vested interest in the policy and that therefore on her predecease the policy moneys passed under her will. (*Cousins* v. *Sun Life Assurance Society*, [1932] W.N. 198.) Therefore, where a wife is named as a beneficiary in a policy, her interest must be got in under the assignment of the policy. But where a policy merely mentions that the contract is in favour of the wife of the life assured without mention of her name or using any expression that would limit "my wife" to "my present wife," a second wife would be entitled to the benefit of the policy. (*Re Browne's Policy*, [1903] 1 Ch. 188.) Such a policy cannot become a banking security owing to the impossibility of ensuring that possible future beneficiaries join in the charge. Where a wife takes out a policy on her husband's life, provided she pays the premiums, no trust interest is involved and she can validly charge the policy in her own right.

Where the beneficiaries include children, the latter, if of full age, must join in the security. If there are minors, a good security cannot be obtained.

Where a policy is taken out by a parent as agent for an infant, any charge given by the former would only be effective if the child died before his majority; the policy becomes his absolute property on his attaining full age. Insurance companies lend on policies of this type only for the purpose of paying the premiums. But where a policy is taken out by a parent for the benefit of his child on attaining a certain age, no absolute interest accrues to the child and on the death of the parent before maturity of the policy, the benefit of the policy passes to the deceased's estate. Where a father in a proposal form declared he was making the proposal for his child, it was held that he was not acting as agent for the latter but entering into the contract for the benefit of the child. (*Tibbetts* v. *Engelbach*, [1924] 2 Ch. 348.)

A life policy is a chose in action, and a mortgage thereof is accomplished by an assignment of the policy-holder's rights with a proviso for redemption. The form of assignment will be by deed and will contain the usual provisions as to continuing security for all moneys, etc. It will cover any bonuses and additions to the policy and contain an undertaking of the assignor to pay the premiums or for the bank to charge his account therewith in default. Authority will be given for the bank to give a discharge on behalf of the assured's personal representatives to avoid joining them in if the policy becomes a claim, and power will be taken to sell or surrender the policy. The assignment requires stamping as a mortgage at the rate of 2s. 6d. per cent

on the limit inserted in the assignment or on the highest amount it is proposed to lend if the assignment is unlimited. But where a bank took an assignment of a policy for £500 as part cover for a debt in excess of that figure, stamping it to cover £500 only, and the insurance company refused to pay either the policy moneys due or £500 thereof to the bank unless the assignment was stamped to cover the entire sum owing on overdraft, it was held that where a security is taken for an unlimited amount it is not necessary to stamp it for any greater amount than the amount for which the lender looks to the security. (*Re Waterhouse's Policy*, Law Times 13th March, 1937.) But see also STAMP DUTIES.

By the Policies of Assurance Act, 1867, Section 3, no assignment shall confer on the assignee any right to sue for the amount of the policy until written notice of the assignment is given to the company. The date of receipt of such notice regulates priority of conflicting interests in the policy. But an assignee having notice of a previous assignment, notice of which has not been given to the company, cannot get priority over such previous assignment by registering his notice first. (*Newman* v. *Newman* (1885), 28 Ch.D. 674.)

Occasionally a banker is asked to lend against the assignment of a policy that has been lost. Apart from the necessity of providing an indemnity to the company before it will pay over the policy moneys, there is the risk that the policy is in the hands of a prior assignee, and non-production of the policy might be held to be constructive notice of his interest.

A statutory acknowledgment of notice of assignment must be given on request by the company which is entitled to a fee of 5s. When giving notice, it is usual to ask the company, if any prior notice of dealings with the policy has been received. If such is the case, all prior assignments and re-assignments should be obtained and kept with the security, as they form part of the chain of title and the company will not discharge the policy moneys without their production.

Where the security is withdrawn, a re-assignment must be executed under seal and handed to the assignor with the policy, the assignment, and any other relative documents. Notice of re-assignment should be sent to the company. It is not the practice of an insurance company to require any previous re-assignment to be duly stamped before paying the amount due under the policy.

Where a policy becomes a claim by reason of death or maturity a form of receipt by the assignee supplied by the insurance company must be completed. If indorsed on the policy, no stamp is required, otherwise a twopenny receipt stamp must be used. Most companies require such receipt to be under the seal of the bank. The company will pay to the assignee only such sum as is covered by the stamp duty on the assignment.

Where surrender of the policy is contemplated the company should be asked for how long the policy can be held without loss of surrender value or without incurring liability for premiums. When a policy is being surrendered on account of the assignor's bankruptcy, his trustee should first be given an opportunity of redeeming it. Occasionally it profits an assignee to pay the premium, inasmuch as sometimes the surrender value increases by more than the premium paid. Occasionally a legal mortgage by way of assignment is not taken, but the policy is deposited with a bank with or without a written memorandum of deposit. A company is under no duty to recognise such an equitable interest, but in practice it usually accepts notice of an equitable charge. An equitable charge by deposit is good against a trustee in bankruptcy, even without a written memorandum, provided nothing has been done to nullify the charge, such as entering the policy in the bank's safe custody records. When enforcing security in this form, it is necessary to get the co-operation of the policy-holder or his personal representatives.

LIFE TENANT. A life tenant is the person who has a right or interest in landed property for his life, or during the life of some other person (called an estate *pur autre vie*). If on the death of a life tenant the property returns to the grantor of the life interest, or his heirs, the grantor is said to hold the reversion, but if it does not revert to him but passes to another person, that person holds the remainder, and is called the remainderman.

A life tenant has power to raise money on mortgage of the settled land for the purposes set out in Section 71 of the Settled Land Act, 1925. These include payment off of encumbrances, and payment for any improvement authorised by the above Act.

(See the provisions of the Settled Land Act, 1925, under SETTLED LAND.)

25—(B.1535)

LIGHT GOLD. When gold coins fall below a certain weight they cease to be legal tender. The least current weight, troy, for a half-sovereign is 61·125 grains, for a sovereign 122·5 grains, for a two-pound piece 245 grains, for a five-pound piece 612·5 grains.

It has been calculated that a sovereign is, by ordinary wear and tear, reduced below the lowest legal tender weight on an average in about fifteen to eighteen years.

The seventh Section of the Coinage Act, 1870, gives a person power to cut or deface a light coin, but this is never done in the ordinary course of business, as gold coins, even though they are below the prescribed least current weight, pass from hand to hand without question. The words of the Section are—

"Where any gold coin of the realm is below the current weight as provided by this Act, or where any coin is called in by proclamation, every person shall, by himself or others, cut, break, or deface any such coin tendered to him in payment, and the person tendering the same shall bear the loss. If any coin cut, broken, or defaced in pursuance of this Section is not below the current weight, or has not been called in by any proclamation, the person cutting, breaking, or defacing the same shall receive the same in payment according to its denomination."

There is no penalty attached for non-compliance with the Act.

By the Coinage Act, 1891, Section 1, gold coins which have not been called in by proclamation and are below the least current weight as provided by the Coinage Act, 1870, shall, if they have not been illegally dealt with, be paid for by the Mint at their nominal value. (s.s. (1).) A gold coin shall be deemed to have been illegally dealt with where it has been lightened otherwise than by fair wear and tear, or has been defaced by having any name, word, device, or number stamped thereon, whether the coin has or has not been thereby diminished or lightened. (s.s. (2).) In a sovereign or half-sovereign loss of weight exceeding three grains from the standard weight shall, for the purposes of this Act, be *prima facie* evidence that the coin has been impaired, diminished, or lightened otherwise than by fair wear and tear. (s.s. (3).)

LIMITATION ACT, 1939. This Act came into force on 1st July, 1940, and consolidated with sundry amendments the law governing the time limits for instituting actions on contracts. Such law had been generically known as the Statutes of Limitation, which included the Limitation of Actions Act, 1623; the Civil Procedure Act, 1835; the Mercantile Law Amendment Act, 1856; and the Real Property Limitation Act, 1874. The idea that rights created and recognised by law can be nullified or cancelled by the passage of time is founded on reasons of expediency and convenience, for it is unreasonable that a party should be subject to the risk of a law action based on an old claim of which he may be entirely ignorant or to which he can give no answer owing to the destruction of the relative evidence. Accordingly, the Limitation of Actions Act, 1623, provided that all actions on contracts not under seal and all actions for arrears of rent must be brought within six years of the cause of action accruing. Contracts under seal were dealt with in the Civil Procedure Act, 1835, which provided that actions on such contracts must be brought within twenty years after the cause of action first accrued. A later statute, known as the Real Property Limitation Act, 1874, limited the period to twelve years in respect of land and any interests therein and, in addition, not only barred the remedy by action, but also the remedy against the land itself.

The Limitation Act of 1939 is a comparatively short measure of thirty-four sections, and consolidates and amends some half-a-dozen statutes of various dates, including those mentioned above, with all the beneficent results that attend a consolidating Act.

The time limit for simple contract actions is left at six years, which means, for example, that six years from the date on which a creditor is entitled to sue for the recovery of a debt, his legal remedy in the Courts will be barred, unless there has been in the period an acknowledgment in writing by the debtor of his liability or he has made payment of interest or principal thereon. It is necessary to emphasise that it is only the *remedy by action* that is lost—the debt still remains, although not enforceable at law. Any security, other than land which the creditor holds, will be enforceable in discharge of the debt.

The new Act reduces the limitation period of twenty years in respect of contracts under seal to twelve years. The other amendment of outstanding interest is that which puts a limitation period of twelve years on mortgages of personalty, such as charges on stocks and shares and assignments of life policies. Prior to the 1939 Act, there was a limitation of twelve years in respect of recovery of a debt covered by a charge on

leasehold or freehold property, but there was no such limitation in respect of mortgages of personal property. But an important difference between charges on realty and on personalty still obtains, namely, that, after the expiration of the prescribed period of twelve years, the lender's right against mortgaged freehold or leasehold property is barred, in addition to his right to recover on the personal covenant to repay. In the case of a charge on personalty, however, although the right to sue on the underlying debt is lost at the expiration of twelve years, the right over against the security is not disturbed.

When part payment of a debt is made, or interest is paid thereon, or an acknowledgment of the debt is given in writing by the debtor, the debt is thereby kept alive and the six years or twelve years then begin to run from the date of the last payment or acknowledgment. For example, if Brown signed in 1939 a promissory note payable on demand in favour of Jones, and neither pays interest nor repays any part of the principal nor gives any further written acknowledgment of the debt for a period of six years, at the end of that time Brown may plead the statute and be entirely released from his liability on the note to Jones. But if Brown in, say, the year 1942 repays part of the money owing, the six years will begin again to run from the year 1942, and so on, the six years commencing afresh at each payment or acknowledgment. But a payment by a debtor does not keep the debt alive as against a surety.

By Lord Tenterden's Act (9 Geo. IV, c. 14, s. 1), in actions of simple contract debts, no acknowledgment or promise by words only shall be sufficient evidence to take the case out of the statute, unless such acknowledgment or promise be made in writing and signed by the party chargeable, or (by 19 & 20 Vict. c. 97, s. 13) by his agent duly authorised.

In *Jones* v. *Bellegrove Properties, Ltd.* (1949), it was held that the production of a company's balance sheet, at its annual general meeting, showing an item "Sundry Creditors" was sufficient acknowledgment in writing of a debt due by the company, and included in such items, as to prevent such debt being statute-barred.

In the case of an infant or an insane person, no action can be brought personally either by or against either of them until the infant attains his majority or the insane person recovers. An infant or person of unsound mind may recover any land or rent within six years from the ceasing of the disability. The utmost allowance for disability is thirty years from the right accruing. If a defendant is beyond the seas or out of the jurisdiction, when the cause of action arises, an action may be brought within six years from his return; but where the defendant goes out of the jurisdiction after the cause of action arises, the running of the statute is not affected. If a plaintiff is beyond the seas when a cause of action arises, no additional time is allowed—the statute runs against him.

Where there are several debtors (except in the case of a mortgage of land), the debt must be acknowledged by each one in order to keep it alive against each, and anyone who has not acknowledged it may plead the statute. Where there are two or more joint contractors, no such joint contractor shall be chargeable in respect of the written acknowledgment only of the other. Where there are two or more co-contractors or co-debtors, none of them shall lose the benefit of the limitation, by reason only of payment of any principal or interest by any of the others.

A debt of a deceased person which is statute-barred may legally be paid by his executor, as in an ordinary contract the statute does not bar the right but only the remedy.

Where a loan is granted against security and the debt has become statute-barred, the banker is unable to sue the customer for the debt, but the fact of the banker's claim against the debtor personally having been barred does not affect his claim upon the security other than land, nor does it affect his claim upon any securities or money belonging to the debtor which may come into his possession as a banker after his right to sue the debtor is statute-barred.

A defendant must, if he intends to plead the statute, set up a special plea before the hearing of the action or he will not be allowed to advance it against the plaintiff's claim.

ADMINISTRATOR. (See TRUSTEE, below.)

BANK NOTES. The Limitation Act, 1939, does not apply to bank notes.

BILL OF EXCHANGE. An action on a bill of exchange must be commenced within six years from the time when the cause of action arose; that is, from the date when the bill was due to be paid as regards the acceptor, and from the date when notice of dishonour is received as against the drawer or an indorser.

BOND. A bond continues for twelve years

from the date on which the right to bring an action first accrues. (See DEBT, below.)

BREACH OF TRUST. The Limitation Act cannot be pleaded to a breach of trust. (See TRUSTEE, below.)

CALLS. A call is a specialty debt, and may be sued for in England at any time within twelve years. (See Section 20 (2), Companies Act, 1948, under ARTICLES OF ASSOCIATION.)

COMPOSITION WITH CREDITORS. If a debtor fails to pay a composition as provided in the deed of arrangement, the statute begins to run from the date of the failure to keep his promise.

CURRENT ACCOUNTS. In *Swiss Bank Corporation* v. *Joachimson* (1921), 37 T.L.R. 534 the Court of Appeal held that express demand by a customer for repayment of a current account balance is a condition precedent to the right to sue the banker for the amount. Atkin, L.J., said: "The result of this decision will be that for the future bankers may have to face legal claims for balances of accounts which have remained dormant for more than six years. But seeing that bankers have not been in the habit as a matter of business of setting up the Statute of Limitations against their customers or their legal representatives, I do not suppose that such a change in what was supposed to be the law will have much practical effect." (See DORMANT BALANCES.)

Where a debit balance has remained standing without payment, either of principal or interest, or without any written acknowledgment, the debtor may plead the statute at the end of six years and the banker will be unable to recover the money, unless demand for payment has to be made (as is provided in most forms of charge) when the time runs from the date of demand. A mere debit to the account by the banker for interest does not keep the debt alive.

If the account is in several names the debt is kept alive only against those who have acknowledged it; a payment by one does not prevent the others from pleading the statute.

If a customer has several accounts they must all be considered as really one account; that is, if a loan account has been absolutely dormant for six years the customer cannot plead that the loan is statute-barred if he has also other accounts which have been operated upon.

In an ordinary loan account the statute runs from the date when the money was paid and not necessarily from the date of the cheque.

If a loan is statute-barred it does not follow that the interest on the loan is also barred. (See INTEREST, below.)

DEBT. A person cannot be sued for a debt after six years from the date when it was incurred. If part payment has been made or formal acknowledgment given, the six years begin to run from the date of the payment or acknowledgment. The acknowledgment must be in writing, and be signed by the party chargeable (or his duly authorised agent). (Lord Tenterden's Act, 9 Geo. IV, c. 14, s. 1, and 19 & 20 Vict. c. 97, s. 13.)

In the case of a debt which is more than six years old, in respect of which no payment or acknowledgment has been made, if the debtor then makes a payment on account of the debt, that payment does not bring the debt to life again, unless a promise, express or implied, is made to pay the debt. In order to take a statute-barred debt out of the statute, there may be an acknowledgment of the debt from which a promise to pay it must be implied; or an unconditional promise to pay it; or a conditional promise to pay the debt in writing and evidence that that condition has been performed. "The new promise and not the old debt is the measure of the creditor's right. If the debtor simply acknowledges an old debt, the law implies from that simple acknowledgment a promise to pay it, for which promise the old debt is a sufficient consideration. But if the debtor promises to pay the old debt when he is able, or by instalments, or in two years, or out of a particular fund, the creditor can claim nothing more than the promise gives him" (*per* Wigram, V.C., *Philips* v. *Philips*, 13 L.J. Ch. 445). Where a debt is statute-barred and the debtor makes any promise or acknowledgment, he has always the right to couple any terms with his promise or acknowledgment, and unless these are satisfied, the creditor cannot sue with success. (See Leake on *Contracts*.) The acknowledgment or promise to pay a statute-barred debt must be in writing.

In the case of a specialty debt—that is, where the debt is acknowledged in a document under seal—the period is twelve years from the date on which the right to bring an action first accrues.

DEPOSIT ACCOUNTS. The six years begin to run when demand for payment has been made.

If the deposit is repayable after expiration of a specified notice, then the years commence from the date on which the deposit is due to be paid. If repayable at the end

of a fixed period, the years commence from that date.

DIVIDEND. A dividend being a payment under a company's articles of association is a specialty debt, and is not barred until after twelve years.

DRAWER OF CHEQUE. The drawer of a cheque is liable to pay it any time within six years from its date or the date of its issue, whichever is the later, except where through delay in presentation he suffers damage by the banker's failure.

Where a loan has been made on an account, the six years run from the date the money was paid, not necessarily from the date of the cheque, though in most cases the dates will actually be the same.

EXECUTOR. (See TRUSTEE, below.)

GUARANTEE UNDER HAND. The banker's right against a guarantor is barred in six years from the date when the right to bring an action against the guarantor first accrued. Where the guarantee does not contain an express covenant to pay "on demand" (see *Parr's Banking Coy.* v. *Yates*, under GUARANTEE) it has been held that the right of action on each item of the account arose as soon as that item became due and was not paid. Acknowledgments by a debtor do not keep the debt alive as against a guarantor.

A good plan, in connection with guarantees, where there is no covenant to pay on demand, is to have them renewed before the expiration of six years from their date, as this avoids any danger of the operation of the statute. Instead of a fresh guarantee being taken, a written acknowledgment (stamped 6d.) upon the old guarantee by the surety, or sureties, that the guarantee is still in force is sometimes taken.

If the guarantee is drawn as payable on demand or several days after demand, the six years would not begin to run until demand had been made. In *Bradford Old Bank* v. *Sutcliffe*, [1918] 2 K.B. 833, where in a guarantee there was an undertaking to pay "on demand," it was held that there was no cause of action till after demand. (See GUARANTEE.)

When repayment is demanded from the guarantor the statute begins to run in his favour.

GUARANTEE UNDER SEAL. The period is twelve years, otherwise the same remarks apply as in a guarantee under hand.

But if it is in respect of a debt secured by a mortgage of land the limitation is twelve years both as to the remedy on the covenant and the remedy against the land, whether the covenant of the surety is in the mortgage deed itself or in a collateral bond. (*Sutton* v. *Sutton*, (1882), 22 Ch.D. 511.)

INCOME TAX. The Limitation Act is not binding on the Crown. (*Lamber* v. *Taylor* (1825), B. & C. 138; *Rustomjee* v. *The Queen*, (1876), 1 Q.B.D. 487.)

INFANT. The statute does not begin to run until he has reached the age of twenty-one. (See above.)

INTEREST. It has been held (*Parr's Banking Co.* v. *Yates*, [1898] 2 Q.B. 460, that where certain advances were barred by the statute, the interest did not fall to the ground at the same time. In this case, principal and interest were guaranteed, and, though the banker's right against the surety was barred, it was held that the payment of interest, commission and other banking charges which had accrued against the guaranteed party within six years before the commencement of the action were as much guaranteed as the payment of the advances, and that the statute did not affect those items.

JUDGMENT. A judgment is statute-barred after twelve years.

PROMISSORY NOTE. If on demand, the six years begin to run in favour of the maker from the date of the note or the date of its issue, whichever is the later, or from the last instalment paid or acknowledgment given. If there are several makers of the note there must be an acknowledgment from each one, otherwise the debt will be kept alive only against the maker who has acknowledged the debt or made the payment, and the others will be released. It is advisable always to have a note renewed before the six years expire, so as to avoid any question of release being raised. Where a promissory note on demand is given as collateral security, with a memorandum of deposit, it is also advisable to have it renewed before the six years expire, though in such a case it is possible that the statute might be held to run from the date of demand for payment and not from the date of the note.

If the note is payable at a specified period after demand, or after date, the six years do not commence to run till the day on which the note is due to be paid.

In *Fettes* v. *Robertson*, [1920] K.B. 37 T.L.R. 80, an action in which the defendant pleaded the statute with respect to a promissory note indorsed by him and dishonoured, Bailhache, J., said: "If there was an unqualified admission of a debt

without anything further, the law implied a promise to pay, but if the admission was accompanied by words of hope or expectancy that the defendant would be able to pay, those words might render the admission not unqualified." The Court of Appeal (1921), 37 T.L.R. 581 held that in the defendant's letters there was no unqualified promise to pay.

PROPERTY. Section 18 of the Limitation Act, 1939, provides—

"(1) No action shall be brought to recover any principal sum of money secured by a mortgage or other charge on property, whether real or personal, or to recover proceeds of sale of land, after the expiration of twelve years from the date when the right to receive the money accrued.

"(2) No foreclosure action in respect of mortgaged personal property shall be brought after the expiration of twelve years from the date on which the right to foreclose accrued:

Provided that if, after that date, the mortgagee was in possession of the mortgaged property, the right to foreclose on the property which was in his possession shall not, for the purposes of this subsection, be deemed to have accrued until the date on which his possession discontinued."

An acknowledgment from one mortgagor of land is sufficient to keep the debt alive.

RENT. No arrears of rent can be recovered by distress, action, or suit, but within six years after the same shall have become due, or after an acknowledgment in writing. Actions of debt for rent on an indenture of demise and all actions of covenant shall be brought within twelve years after the cause of action.

SPECIALTY DEBT. (See DEBT, above.)

STOCKS AND SHARES. There is no period of limitation with regard to a mortgage of stocks and shares. If the debt is statute-barred, that does not affect the banker's claim upon the security.

In *London and Midland Bank, Ltd.* v. *Mitchell*, [1899] 2 Ch. 161, where shares had been given as security, with a blank transfer, it was held that, although the personal action on the debt was barred, the bank's right of property in the shares was not destroyed. Mr. Justice Stirling said: "Though the debt is barred in the sense that a personal action can no longer be brought to recover it, the debt is not gone; nor is the right of property destroyed, for there is no provision in any statute of limitations with reference to personal property similar to that contained in 3 & 4 William IV, c. 27, Section 34, whereby the title to land is extinguished after a lapse of a certain period,"

TRUSTEE. By the Trustee Act, 1888, Section 8, trustees are placed on the same footing as other persons, provided that, in any proceeding against a trustee in which the statute is pleaded, the claim is not founded upon any fraud or fraudulent breach of trust to which the trustee was a party or privy, or to recover trust property, or the proceeds thereof, which is still retained by the trustee or which has been previously received by him and converted to his own use.

For the purposes of that Act, the expression "trustee" shall be deemed to include an executor or administrator. (Section 1 (3).)

LIMITATION (ENEMIES AND WAR PRISONERS) ACT, 1945. This provided for suspending the operation of any limitation statute in respect of proceedings affecting persons who have been enemies or have been detained in enemy territory, and had effect as from 3rd September, 1939.

Section 1 provided as follows—

Suspension of Limitation Period where Party was an Enemy or Detained in Enemy Territory

"(1) If at any time before the expiration of the period prescribed by any statute of limitation for the bringing of any action, any person who would have been a necessary party to that action if it had then been brought was an enemy or was detained in enemy territory, the said period shall be deemed not to have run while the said person was an enemy or was so detained, and shall in no case expire before the end of twelve months from the date when he ceased to be an enemy or to be so detained, or from the date of the passing of this Act, whichever is the later:

Provided that, where any person was only an enemy as respects a business carried on in enemy territory, this section shall only apply, so far as that person is concerned, to actions arising in the course of that business.

"(2) If it is proved in any action that any person was resident or carried on business or was detained in enemy territory at any time, he shall for the purposes of this Act be presumed to have continued to be resident or to carry on business or to be detained, as the case may be, in that territory until it ceased to be enemy territory, unless it is proved that he ceased to be resident or to carry on business or to be detained in that territory at an earlier date.

"(3) If two or more periods have occurred in which any person who would have been such a necessary party as aforesaid was an enemy or was detained in enemy territory, those periods shall be treated for the purposes of this Act as one continuous such period beginning with the beginning of the first period and ending with the end of the last period."

LIMITED CHEQUE. A cheque limited to a certain amount as, for example, where the written amount must not exceed the amount printed in the margin. A limited cheque drawn by a bank upon a foreign correspondent may have in the left-hand margin columns for £5, £10, £20, £30, £40, £50, and underneath each such amount the equivalents in foreign currencies. If a cheque for, say, £8 or its equivalent in foreign money is drawn, the columns £20 and upwards are cut off so that the left-hand remaining column will then be for £10 and its equivalents, thus indicating that the cheque is limited to an amount not exceeding £10 or its equivalents.

Cheques issued in foreign currencies are drawn in accordance with the rate of exchange.

LIMITED COMPANY. (See COMPANY LIMITED BY SHARES, COMPANY LIMITED BY GUARANTEE, COMPANY UNLIMITED, LIMITED PARTNERSHIP, PRIVATE COMPANY, PUBLIC COMPANY.)

LIMITED MARKET. On the Stock Exchange there is said to be a "limited market" for any particular shares when there is difficulty in dealing in them. (See FREE MARKET.)

LIMITED PARTNERSHIP. Limited partnerships were established by the Limited Partnerships Act, 1907 (7 Edw. VII, c. 24), which came into operation on January 1, 1908.

The idea of the limited partnership has not appealed to the business world and since the passing of the Act only some 1,300 such partnerships have been registered.

The Act does not provide for the formation of partnerships with limited liability, but merely for the creation of one or more partners with limited liability, the other partner, or partners, being responsible to an unlimited extent for the debts of the firm.

The main provisions of the Act are as follows—

Definition and Constitution of Limited Partnership.

"Section 4. (1) From and after the commencement of this Act limited partnerships may be formed in the manner and subject to the conditions by this Act provided.

"(2) A limited partnership shall not consist, in the case of a partnership carrying on the business of banking, of more than ten persons, and in the case of any other partnership, of more than twenty persons, and must consist of one or more persons called general partners, who shall be liable for all debts and obligations of the firm, and one or more persons to be called limited partners, who shall at the time of entering into such partnership contribute thereto a sum or sums as capital or property valued at a stated amount, and who shall not be liable for the debts or obligations of the firm beyond the amount so contributed.

"(3) A limited partner shall not during the continuance of the partnership, either directly or indirectly, draw out or receive back any part of his contribution, and if he does so draw out or receive back any such part shall be liable for the debts and obligations of the firm up to the amount so drawn out or received back.

"(4) A body corporate may be a limited partner.

Registration of Limited Partnership required.

"(5) Every limited partnership must be registered as such in accordance with the provisions of this Act, or in default thereof it shall be deemed to be a general partnership, and every limited partner shall be deemed to be a general partner.

Modifications of General Law.

"6. (1) A limited partner shall not take part in the management of the partnership business, and shall not have power to bind the firm:

Provided that a limited partner may by himself or his agent at any time inspect the books of the firm and examine into the state and prospects of the partnership business, and may advise with the partners thereon.

If a limited partner takes part in the management of the partnership business he shall be liable for all debts and obligations of the firm incurred while he so takes part in the management as though he were a general partner.

"(2) A limited partnership shall not be dissolved by the death or bankruptcy of a limited partner, and the lunacy of a limited partner shall not be a ground for dissolution of the partnership by the Court unless the lunatic's share cannot be otherwise ascertained and realised.

"(3) In the event of the dissolution of a limited partnership its affairs shall be wound up by the general partners unless the Court otherwise orders.

"(5) Subject to any agreement expressed or implied between the partners—

"(*a*) Any difference arising as to ordinary matters connected with the partnership business may be decided by a majority of the general partners;

"(*b*) A limited partner may, with the consent of the general partners, assign his share in the partnership, and upon such an assignment the assignee shall become a limited partner with all the rights of the assignor;

"(*c*) The other partners shall not be entitled to dissolve the partnership by reason of any limited partner suffering his share to be charged for his separate debt;

"(*d*) A person may be introduced as a partner without the consent of the existing limited partners;

"(*e*) A limited partner shall not be entitled to dissolve the partnership by notice.

"7. Subject to the provisions of this Act, the Partnership Act, 1890, and the rules of equity and of common law applicable to partnerships, except so far as they are inconsistent with the express provisions of the last-mentioned Act, shall apply to limited partnerships.

Manner and Particulars of Registration.

"8. The registration of a limited partnership shall be effected by sending by post or delivering to the registrar at the register office in that part of the United Kingdom in which the principal place of business of the limited partnership is situated or proposed to be situated a statement signed by the partners containing the following particulars—

(*a*) The firm name;

(*b*) The general nature of the business;

(*c*) The principal place of business;

(*d*) The full name of each of the partners;

(*e*) The term, if any, for which the partnership is entered into, and the date of its commencement;

(*f*) A statement that the partnership is limited, and the description of every limited partner as such;

(*g*) The sum contributed by each limited partner, and whether paid in cash or how otherwise.

Registration of Changes in Partnerships.

"9. (1) If during the continuance of a limited partnership any change is made or occurs in—

(*a*) The firm name;

(*b*) The general nature of the business;

(*c*) The principal place of business;

(*d*) The partners or the name of any partner;

(*e*) The term or character of the partnership;

(*f*) The sum contributed by any limited partner;

(*g*) The liability of any partner by reason of his becoming a

limited instead of a general partner or a general instead of a limited partner;

a statement, signed by the firm, specifying the nature of the change shall within seven days be sent by post or delivered to the registrar at the register office in that part of the United Kingdom in which the partnership is registered.

"(2) If default is made in compliance with the requirements of this Section each of the general partners shall on conviction under the Summary Jurisdiction Acts be liable to a fine not exceeding one pound for each day during which the default continues.

Advertisement in Gazette.

"10. (1) Notice of any arrangement or transaction under which any person will cease to be a general partner in any firm, and will become a limited partner in that firm, or under which the share of a limited partner in a firm will be assigned to any person, shall be forthwith advertised in the Gazette, and until notice of the arrangement or transaction is so advertised, the arrangement or transaction shall, for the purposes of this Act, be deemed to be of no effect.

"(2) For the purposes of this Section, the expression 'the Gazette' means—

In the case of a limited partnership registered in England, the *London Gazette*;

In the case of a limited partnership registered in Scotland, the *Edinburgh Gazette*;

In the case of a limited partnership registered in Ireland, the *Dublin Gazette*.

Registration.

"13. On receiving any statement made in pursuance of this Act the registrar shall cause the same to be filed, and he shall send by post to the firm from whom such statement shall have been received a certificate of the registration thereof.

"14. At each of the register offices hereinafter referred to the registrar shall keep, in proper books to be provided for the purpose, a register and an index of all the limited partnerships registered as aforesaid, and of all the statements registered in relation to such partnerships.

"15. The registrar of joint stock companies shall be the registrar of limited partnerships, and the several offices for the registration of joint stock companies in London, Edinburgh, and Dublin shall be the offices for the registration of limited partnerships carrying on business within those parts of the United Kingdom in which they are respectively situated.

"16. (1) Any person may inspect the statements filed by the registrar in the register offices aforesaid, and there shall be paid for such inspection such fees as may be appointed by the Board of Trade, not exceeding one shilling for each inspection; and any person may require a certificate of the registration of any limited partnership, or a copy of or extract from any registered statement, to be certified by the registrar, and there shall be paid for such certificate of registration, certified copy, or extract such fees as the Board of Trade may appoint, not exceeding two shillings for the certificate of registration, and not exceeding sixpence for each folio of seventy-two words, or in Scotland for each sheet of two hundred words.

"(2) A certificate of registration, or a copy of or extract from any statement registered under this Act, if duly certified to be a true copy under the hand of the registrar or one of the assistant registrars (whom it shall not be necessary to prove to be the registrar or assistant registrar) shall, in all legal proceedings, civil or criminal, and in all cases whatsoever be received in evidence."

It should be noted that Section 6 says that a limited partner shall not take part in the management of the partnership business, and shall not have power to bind the firm. The Section does not definitely say that he must not draw cheques upon the banking account of the firm, but it is probably safe to infer that he has no power to operate upon the account. At any rate bankers are not likely to regard a limited partner as having such authority.

The same Section says that a limited partner may at any time inspect the books of the firm, but before allowing a limited partner to receive the firm's passbook or statement, or to inspect the firm's account, the authority of the other partners should be obtained.

There is no provision in the Act that a distinctive name should be used to indicate when a firm is a limited partnership.

It may be difficult, in some cases, for a banker to know whether a person is a limited or general partner. If he cannot obtain reliable information from the partners themselves, he may inspect the register or obtain extracts therefrom (see Section 16 above). The provisions of the Bankruptcy Act, 1914, shall "apply to limited partnerships in like manner as if limited partnerships were ordinary partnerships, and, on all the general partners of a limited partnership being adjudged bankrupt, the assets of the limited partnership shall vest in the trustee." (Section 127, Bankruptcy Act, 1914.) (See COMPANIES, PARTNERSHIPS.)

The death, lunacy, or bankruptcy of a limited partner does not dissolve the firm.

When a firm carries on business under a business name which does not consist of the true surnames of the partners, it must be registered under the Registration of Business Names Act, 1916. (See REGISTRATION OF BUSINESS NAMES.)

LIQUID ASSETS. These, sometimes called floating assets, consist of cash and other assets continually undergoing conversion into cash, such as stock, sundry debtors, bills receivable. They are to be distinguished from fixed assets which are acquired for use in the business, such as premises, plant, and machinery. It is the function of an asset, not its nature, which determines into which category it goes, e.g. machinery is a fixed asset in a factory—it is what a business trades *with*; in a business concerned with manufacture of machinery, it will be a liquid asset—it is what the business trades *in*.

LIQUIDATED DAMAGES. A sum payable as damages for breach of contract the amount of which is not left to assessment by a jury, but is previously agreed by the parties to the contract. In an action for breach of contract, neither more nor less than the agreed sum can be awarded, as opposed to a penalty, where a plaintiff can get such damages as he can prove, which may be more or less than the penalty. The measure of damages on a dishonoured bill is deemed to be liquidated damages.

LIQUIDATION. A winding up, or closing of business.

A joint stock company which is being wound up is said to be "in liquidation." (See WINDING UP.)

LIQUIDATOR. A person appointed by the Court (in a compulsory liquidation) or by the creditors of a company (in a creditors' voluntary winding up) or by members of a company (in a members' voluntary winding up) to get in what may be owing to the company from its debtors, to realise other assets, to collect what may be due from its members, and after payment of the company's debts to distribute any balance to the members in proportion to their share holding.

The liquidator in a compulsory winding up must use the Companies Liquidation Account at the Bank of England, unless the Board of Trade authorises him to use a local bank. (Section 248, Companies Act, 1948.) When asked to open an account for a liquidator in a compulsory winding up, a banker should therefore ask for exhibition of the Order of the Court appointing him, and also for the Board of Trade's sanction for opening the account.

A liquidator appointed under a voluntary winding up may open an account where he pleases, subject to the consent of the Committee of Inspection, if any, and need only produce a certified copy of the resolution of the creditors or members of the company appointing him.

A liquidator's account should be opened in the name of the company in compulsory (or voluntary) liquidation.

In a compulsory winding up, cheques drawn on the banking account must be payable to order, and bear on their face the name of the company. They must be signed by the liquidator and countersigned by at least one member of the Committee of Inspection. In the absence of a Committee of Inspection, the Official Receiver may, at the direction of the Board of Trade, exercise the functions of a committee with regard to the bank account.

Cheques drawn by a liquidator in a compulsory winding up or a creditors' voluntary winding up are exempt from stamp duty, but this is not so in a members' voluntary winding up.

Where two or more liquidators are appointed, all must sign cheques unless the Order of the Court, in a compulsory winding

up, provides for less than all to act or, in a voluntary winding up, the resolution to wind up provides for less than all to sign, or makes no provision, in which case not less than two may sign. Where a voluntary winding up is placed under supervision of the Court, the signing powers of the liquidators are not affected.

There are no statutory powers for a liquidator to delegate signing powers to an outside party. In practice, bankers are frequently asked to accept such delegation for the convenience of the liquidator (e.g. in a heavy liquidation involving the drawing of large numbers of cheques), and in cases where the standing of the liquidator is high, such delegation will be permitted with or without an indemnity from the liquidator according to circumstances.

A liquidator in a compulsory winding up has power to raise money on the assets of the company for liquidation purposes, without the leave of the Court.

In cases where the borrowing is required to bring or defend an action on behalf of the company, or to carry on the business, the sanction of the Court or the Committee of Inspection is necessary.

In a voluntary winding up of either type, a liquidator does not require sanction to borrow, but if there is a Committee of Inspection, it may be advisable to get its permission. In practice, where the liquidation proceedings are likely to be involved, or where considerable sums are required, the consent of the Court will in many cases be sought if it is a creditors' voluntary winding up. In similar circumstances in a members' voluntary winding up, the approval of the company in general meeting is often sought.

A charge over any assets of the company given by a liquidator will have priority over all creditors of the company, save those already secured at the time the winding up commenced.

A liquidator is not personally liable for a borrowing on behalf of a company, unless he specially covenants to that end. See also WINDING-UP.

LIVERY OF SEISIN. That is, delivery of possession. In ancient times when a person transferred property a livery of seisin took place. The transferor actually handed over possession of the land by formally vacating it and permitting the transferee to enter into possession, or by handing over a piece of turf or a twig. Blackstone says: "This livery of seisin is no other than the pure feudal investiture, or delivery of corporeal possession of the land or tenement, which was held absolutely necessary to complete the donation."

LLOYD'S BONDS. Bonds, named after the counsel who invented them, which were devised for the purpose of enabling a railway company to borrow money in evasion of its borrowing powers. Though the company could not borrow in excess of its borrowing powers, the bonds could be issued in respect of an existing debt, and were used in payment of contractors for work done and material supplied. The contractors thus obtained a security which they could realise or on which they could raise money.

LOADING. A term used in assurance companies to describe the amount which is included in a premium in order to cover the expenses of management of the company. The "loading" which is not required forms part of the "profits" and is returned to the members by way of bonus. (See LIFE POLICY.)

The term is also applied to a method of remuneration on overdrawn accounts, whereby, in place of a commission charge, the borrower agrees to pay interest on a stipulated figure over and above the actual overdraft.

LOANS. (See ADVANCES.)

LOANS LEDGER. Where an advance is made by way of loan, it is entered in the loans ledger. Country bankers lend money most commonly by way of overdraft upon a current account, which overdraft may fluctuate from day to day, and the customer draws only such part of the sanctioned overdraft as he may require, but in the case of a loan, mostly met with in London, the full amount is debited at once to the customer's account in the loans ledger.

The loans ledger is kept in practically the same way as the current account ledgers (*q.v.*).

LOCAL ACCEPTANCE. One of the five classes of qualified acceptance. Where an acceptance stipulates that the bill is to be payable at a particular place and there only, it is qualified as to place, and is called a local acceptance. (See BILLS OF EXCHANGE ACT, 1882, Section 19 (2).) Where the drawer of a bill specified a foreign place of payment with no express statement that the bill was to be paid there only and the drawee accepted the bill in that form, the acceptance was held to be a general one. (*Bank Polski* v. *K. J. Mulder & Co.*, [1942] 1 All E.R. 396.)

LOCAL AUTHORITIES. For the purposes of local government, the whole of England and Wales, with the exception of London, is divided into counties and county boroughs. The counties are divided into county districts (non-county boroughs, urban and rural districts). Rural districts are divided into parishes. These districts are all governed by "councils" except that in some of the small parishes there is no parish council, and in such cases the governing body is the parish meeting.

London is governed by the London County Council and Metropolitan Borough Councils.

The powers of all these councils are strictly limited by statute, and any expenditure not authorised by statute is illegal.

The principal statute governing all local authorities (except in the Administrative County of London) is the Local Government Act of 1933. Reference is made below to many of the more important sections affecting a bank's relations with local authorities.

All revenue is obtained from rates and government grants and from trading enterprises.

Bank Accounts.

When a local authority opens a banking account it is prudent to obtain a resolution under the seal of the Council appointing the bank as banker to the authority.

Where the authority is a county or borough council, the account should be in the name of the Treasurer. In the cases of urban, rural, and parish councils, the account should be in the name of the authority.

Local authorities must keep separate accounts in their own books; county and rural district councils must keep "General" and "Special" expenses separate. The "Internal" accounts relating to rating, housing, and public assistance must be kept separate. This division need not, however, apply to the bank accounts, and it is now recognised that with the undermentioned exceptions, all these separate "Internal" accounts may, if the Council so resolve, be amalgamated into one bank account.

Where the authority prefer, however, to keep separate banking accounts, some responsibility devolves upon the bank to see that no obvious irregularity takes place, particularly in transfers from one account to another. (But see Local Government Act, 1933, Section 203.)

The exceptions as to separate banking accounts are—

(1) Trading accounts, such as tramways, water, etc.

(2) Road Fund licence accounts.

(3) Consolidated Loans Fund accounts, established under a local Act.

(4) Public Works Loans Board moneys. (See Public Works Loans Act, 1882, Section 8.)

Right of "set off" may be established between the accounts of an authority on the following general lines—

(*a*) A credit balance on the General Account, being available for all purposes, may be set off against a debit balance on any other account.

(*b*) A credit balance on a "Capital" account is earmarked for a specific purpose and cannot be set off against a debit balance on any other account.

(*c*) Credit and debit balances on "Revenue" accounts may normally be set off against each other.

Cheques.

In the case of a county treasurer's account, Section 184 (4) of the Local Government Act, 1933, provides that all cheques issued in pursuance of an order of a county council shall be countersigned by the Clerk to the County Council or some other person approved by the Council. If some other person is appointed by the Council, the bank should obtain a copy of the resolution of the Council to this effect as well as a specimen signature. All payments out of the County Fund must be made in pursuance of an order signed by three members of the Finance Committee and countersigned by the Clerk of the Council, except,

(*a*) In pursuance of the specific requirement of any enactment.

(*b*) By order of a competent Court or a justice of the peace.

Although the Act does not contain a similar provision as to countersignature in the case of a Borough Treasurer's account the bank would be well advised to arrange that some other approved signature as well as that of the Treasurer is obtained on all cheques drawn. All payments out of the General Rate Fund must be made in pursuance of an order signed by three members of the Council and countersigned by the Town Clerk, except,

(*a*) and (*b*) as in the case of county councils;

(*c*) in respect of the remuneration of the mayor, recorder, or any employee of the Council.

In the case of urban or rural district councils, there is no statutory provision as to signatures on cheques, and it is a matter of arrangement between the Council and the bank, but here again it would be a wise precaution to see that at least two officials sign cheques.

In the case of parish councils, the Act provides that two members of the Council must sign cheques (Section 193 (8).)

Treasurerships.

The Treasurer of a local authority must be "a fit person" appointed by the Council (see Local Government Act, 1933, Sections 102, 106, 107, 114) and in practice is either—

(1) An official of the Council;

(2) The Council's bank;

(3) The local manager of the Council's bank.

Inasmuch as the Ministry of Health have advised that "although in general the term 'person' includes, by virtue of Section 19 of the Interpretation Act, 1889, a body of persons corporate or unincorporate, the Minister agrees that in the context in which the word occurs in Sections 102, 106, 107, and 114 of the Local Government Act, 1933, it is open to doubt whether this meaning is to be attached to the term," it will be seen that it is open to question whether a bank can legally be appointed Treasurer to a local authority. Section 225 also appears to regard the appointed "person" as an individual.

There are also certain obligations laid by the Act upon the Treasurer, who acts in a fiduciary capacity, and is responsible to the ratepayers as a body. The fact that he may be acting in pursuance of a resolution of the Council and a signed order does not excuse him if he makes any payment which is in fact *ultra vires*.

Since no action taken by the Council can relieve the Treasurer of the liabilities imposed on him by reason of his fiduciary position, it would appear that a bank might well feel justified in being unwilling to take the risks incurred in acting as Treasurer to a local authority.

There would appear, however, to be very little risk in the case of a parish council.

Borrowing.

Borrowing by local authorities is strictly limited by statute, and the main provisions governing borrowing (apart from London) are contained in Sections 195 (purposes for "Long-term" borrowing), 196 (modes of borrowing), 197 (Security), 198 (period), 212 (method of repayment), 215 (temporary borrowings), and 216 (re-borrowing) of the Local Government Act, 1933.

All borrowings require government sanction, except—

(1) Moneys raised by mortgage on the sewage works and plant of a local authority (by virtue of Section 310, Public Health Act, 1936).

(2) Money borrowed temporarily under Section 215 (*a*), Local Government Act, 1933, pending the receipt of revenues.

(3) Money borrowed by a county council for lending to a parish council. (Section 195 (*d*), Local Government Act, 1933.)

All borrowings by local authorities are charged indifferently on all the revenues of the authority, except temporary borrowings without security and priorities existing prior to 1933. (Section 197, Local Government Act, 1933.)

For "long-term" borrowings, it is desirable for a bank to take a mortgage of the rates in the prescribed form and it is usual to insert therein a clause covering repayment on the giving of six months' notice by either side. A similar mortgage, suitably amended, may, of course, be taken as security for "temporary" borrowings if it is desired to be sure of obtaining the benefit of Section 197. Temporary borrowings by local authorities in London are still governed by Section 3, Local Authorities (Financial Provisions) Act, 1921. Borrowing under this enactment requires government sanction.

Before advancing under any of the above powers, it is important to obtain a resolution of the Council and this should be under seal. Such resolution should recite the wording of the Section under which the borrowing is authorised.

Some reference must here be made to Section 203, Local Government Act, 1933, which relieves lenders from making inquiries as to the legality or regularity of borrowings and gives indemnity to a lender if the moneys so borrowed are irregularly or illegally applied. Although the Section appears to give complete security in respect of irregularities or illegalities, it would be very unwise for a lending banker to rely on this Section if he had any knowledge or notice that such borrowing was, in fact, out of order. If he is in any way put on inquiry, he should pursue the matter further and satisfy himself thoroughly before making the advance.

All persons are supposed to know the law, and if, for example, the proposed borrowing were for a longer period than that laid down in the Eighth Schedule of the Act or if, for any purpose known to be illegal, the protection of Section 203 could not be relied upon.

The Metropolitan Area.

The London County Council may borrow by the issue of consolidated stock, terminable annuities, L.C.C. bills, or by way of mortgage for certain purposes, such as making loans to Metropolitan Borough Councils (L.C.C. (Finance Consolidation) Act, 1912). Under Section 3 of the same Act it may borrow for a period not exceeding six months for any purpose and in any manner the Council thinks fit. It may also borrow, with government sanction, by issuing bearer bonds or local bonds for housing purposes.

The City of London Corporation may borrow upon the security of the corporate property at the discretion of the Common Council.

Metropolitan Boroughs may, with the approval of the L.C.C., borrow for street improvement purposes. There are also private Acts authorising special borrowings, but by Section 19 of the Metropolis Management Act, 1862, a lender is absolved from inquiry as to the regularity of borrowings by a borough council, the resolution of the Council under Seal being sufficient to cover the lender. This is a wider protection than that given by Section 203 of the Local Government Act, 1933.

LOCAL BONDS. By the Housing (Additional Powers) Act, 1919, a local authority (including a County Council) could, with the consent of the Minister of Health, borrow any sums which they had power to borrow for the purposes of the Housing Acts, 1890 to 1919, by the issue of bonds. The power to issue local bonds is now contained in Section 122 of the Housing Act, 1936.

Local Bonds shall—

(*a*) be secured upon all the rates, property, and revenues of the local authority;

(*b*) bear interest at such rate of interest as the Treasury may from time to time fix;

(*c*) be issued in denominations of £5, £10, £20, £50, and £100, and multiples of £100;

(*d*) be issued for periods of not less than five years.

Local bonds are exempt from stamp duty, and may be transferred free of expense from one person to another by execution of a transfer deed.

Trustees may invest in these Bonds unless expressly forbidden by the instrument, if any, creating the trust.

No income tax is deducted from interest on the Bonds when the total holding does not exceed £100, but holders are assessable to income tax in the ordinary way to the extent of their liability.

LOCAL GOVERNMENT ACT, 1933. (See LOCAL AUTHORITIES.)

LOCAL GOVERNMENT BOARD. By the Ministry of Health Act, 1919, all the powers and duties of the Local Government Board were transferred to the Minister of Health. (See LOCAL AUTHORITIES.)

LOCAL LAND CHARGE. (See under LAND CHARGES.)

LOCUS SIGILLI. Latin, the place for the seal. The letters L.S., inside a circle, are often found on a printed document, such as a form of transfer, to indicate where the seal or wafer is to be placed. In making a copy of a document under seal, the place of the seal is marked in the same way.

LOMBARD STREET. A term which is frequently used when referring to the Money Market (*q.v.*).

LONDON CLEARING HOUSE. (See CLEARING HOUSE.)

LONDON JOINT STOCK BANK DEPOSIT RATE. The rate allowed by joint stock banks in London on deposits at seven days' notice. The rate is calculated at 2 per cent below the prevailing Bank rate. When the Bank rate is 2 per cent, however, the Deposit rate is ½ per cent. Before 1914, the difference was 1½ per cent. This rate is no longer distinctive, as all deposits of the Clearing Banks are at twenty-one days' notice at a rate of 1¼ per cent per annum (1954). (See DEPOSIT ACCOUNTS.)

LONDON PARITY. (See PARITY.)

LONG-DATED PAPER. A term applied to bills of exchange which have more than three months to run.

LONG EXCHANGE. In connection with the foreign exchanges, the long exchange denotes bills with a currency of sixty or ninety days and upwards. (See LONG RATE.)

LONG RATE. A term employed in connection with the foreign exchanges, and signifying the price in one country at which a bill, having 30, 60, or 90 days to run before it is due, drawn upon another country, can be bought.

The long rate is based upon the sight rate by making allowance for interest for the period the bill has to run at the foreign discount rate, for the foreign stamp duty, and for an amount to cover the risk. In dealing in London on, say, Paris, these amounts (interest at Paris rate) are added to the sight rate. In dealing in Paris on London, these amounts (interest at London rate) are deducted from the sight rate. They are added in London because more francs for each £ should be received when the bill is due in three months' time than if francs were received at once, and they are deducted in Paris because fewer francs should be paid for each £ due in three months' time than if the £'s were received at once.

(See CHEQUE RATE, SHORT RATE.)

LORO ACCOUNT. (See under NOSTRO ACCOUNT.)

LOST BANK NOTE. Where a bank note has been lost, the person to whom it belongs must, before he can obtain payment of it from the issuing banker, supply full particulars of the note, including its number, and provide a satisfactory indemnity, that is an undertaking that the banker shall be reimbursed in case of the lost note being found by someone and the banker being compelled to pay it a second time.

Although a banker cannot refuse payment of his own notes to an innocent holder, he should, where notice to stop payment has been received, make very careful inquiries when a "stopped" note is presented for payment.

The Bank of England charges 2s. 6d. for registering a "stop" in respect of one of its notes. Before issuing a fresh note, it requires the loser to make written request (preferably through his banker) setting out fully the circumstances under which the note was lost or destroyed. The Bank of England will require the indemnity of a bank before making payment, which will not be done before twelve months have elapsed from the date of the loss.

The finder of a note has a right to it against every person except the individual who lost it. If he transfers it for value, the transferee, without notice that the note was lost, is absolutely entitled to it. The person who lost it cannot claim it from such a transferee, who will be a *bona fide* holder for value, without notice, of a negotiable instrument.

If a note is lost in its passage through the post, the loss falls upon the person to whom it was sent, provided that he requested it to be sent to him by post, or that it was the custom between the parties to use the post for that purpose.

There is a difference between notes found on private property and in a public building. When found in a private building the note should remain in the possession of the owner of the place, and not be retained by a stranger who may have found it. Where notes were found on a shop floor (a public building) by a person entering the shop and the owner could not be found, it was held (*Bridges* v. *Hawkesworth* (1851), 21 L.J.Q.B. 75) that the person finding them, and not the owner of the shop, was entitled to them, and that he had a right to them against everyone but the true owner. A bank note found on the customers' side of a bank counter would, in the event of no one claiming it, belong to the finder.

The true legal position, according to the best authorities, seems to be that, if the finder believes at the time of finding a bank note that the owner cannot be found, he is not guilty of larceny, although he takes the note intending to deprive the owner of it, and although he afterwards has means of finding the owner, and, nevertheless, retains the property for his own use.

LOST BILL OF EXCHANGE. The Bills of Exchange Act, 1882, Section 69, provides—

"Where a bill has been lost before it is overdue, the person who was the holder of it may apply to the drawer to give him another bill of the same tenor, giving security to the drawer if required to indemnify him against all persons whatever in case the bill alleged to have been lost shall be found again.

"If the drawer on request as aforesaid refuses to give such duplicate bill, he may be compelled to do so."

By Section 70—

"In any action or proceeding upon a bill, the Court or a judge may order that the loss of the instrument shall not be set up, provided an indemnity be given to the satisfaction of the Court or judge against the claims of any other person upon the instrument in question."

By Section 51 (8), "where a bill is lost or destroyed, or is wrongly detained from the person entitled to hold it, protest may be made on a copy or written particulars thereof."

Where a cheque has been lost, the loser of it should at once request the drawer to give notice to the banker on whom it is drawn to stop payment, and the banker should notify

any branches, where it might be presented, of the loss. A record of the loss should be made in the customer's account in the ledger.

If a banker pays a bill or cheque where he has received instructions from the drawer not to do so, he is liable to lose the money, for he cannot debit the amount to his customer's account. The utmost care, therefore, is necessary in dealing with "stop orders," as such notices from customers are called, and copies of all stop orders should be supplied to each cashier, day book clerk, and ledger keeper, through whose hands the cheque may pass, so that all may keep a sharp look-out in case the lost cheque should be presented.

Before giving a duplicate cheque, it is advisable for the drawer to obtain a satisfactory indemnity, otherwise he may have to pay the original cheque (unless it was a crossed cheque marked "not negotiable") to a *bona fide* holder for value, as well as the duplicate. As to a banker collecting a lost cheque, see COLLECTING BANKER.

Where a cheque has been lost and a necessary indorsement has been forged, an innocent holder for value has no recourse against the drawer. The true owner can demand payment from the drawer. If the holder has obtained payment from the drawer, he is liable to the true owner.

If the cheque was payable to bearer and crossed "not negotiable," the position is the same, the holder cannot recover.

If the cheque was payable to bearer, either uncrossed or crossed without the words "not negotiable," an innocent holder for value can enforce payment of it from the drawer. The loser of the cheque must suffer the loss.

Where the cheque was duly indorsed before being lost and was not "not negotiable," a subsequent holder for value without knowledge that it had been lost could sue the drawer and indorsers.

As to a cheque lost or stolen before delivery, see DELIVERY OF BILL.

Where a banker pays a cheque with a forged indorsement, see COLLECTING BANKER, PAYING BANKER. (See PAYMENT STOPPED, POST.)

Where a banker's draft is lost, a duplicate will only be issued against a satisfactory indemnity. If it was lost before indorsement the drawee banker would be in order in requiring confirmation of the indorsement if presented by another banker ostensibly duly indorsed. If presented uncrossed by a non-banker, in such circumstances he would be in order in demanding proof of the presenter's title. It must be remembered, however, that by the laws of some continental countries, a title can be made through a forgery.

If the draft were lost after indorsement, the drawee banker would have no answer against an innocent holder for value.

LOST COUPON. Fresh coupons may usually be obtained from the issuers against a satisfactory indemnity. (See LOST BEARER BONDS.)

LOST DEED. An attested copy of a lost deed is sometimes accepted by a purchaser. The copy should be a copy of the original deed. A copy of a copy is not accepted as evidence. (See ATTESTED COPY.)

LOST DEPOSIT RECEIPT. In the event of a deposit receipt being lost, the banker cannot refuse to pay the money to the person entitled thereto, but he will require a suitable indemnity to be given to protect him from any loss which might arise through his making such payment, without production of the receipt.

LOST DIVIDEND WARRANT. In the case of *Thairwall* v. *Great Northern Railway Company*, [1910] 2 K.B. 509, where certain dividend warrants sent by the defendants to the plaintiff were lost in the post, the defendants, upon being informed of the loss, sent to the plaintiff a form of indemnity, and stated that on its being signed by the plaintiff they would give him a duplicate dividend warrant. The plaintiff declined to sign the indemnity, and brought an action to recover the amount of the dividends. The Divisional Court (reversing a judgment of the County Court in favour of the plaintiff) held that the stockholders of the company having by resolution determined the method in which the dividends were to be paid, i.e. by the sending of dividend warrants, the only obligation of the company was to pay by means of a dividend warrant, and that, having sent such a document by post, they had discharged their duty even although the warrant was lost in the post and never reached the plaintiff. The plaintiff could only get payment by giving a proper indemnity to the company.

The articles of association ot a company may include a clause that the company shall not be responsible for the loss of a dividend warrant sent by post. A shareholder may protect himself against such a risk by instructing the company to pay the dividend direct to his bankers. (See DIVIDEND WARRANT.)

LOST PASS BOOK. Where a pass book cannot be found after a thorough search has been made for it, a duplicate is usually issued. A note of the circumstances and the date of its issue should be entered in the ledger at the top of the page containing the customer's account. The new pass book should be plainly marked "duplicate."

If the book which is lost is a deposit account pass book which requires to be produced each time money is withdrawn, the bank usually arranges with the customer that payments, in the meantime, will be made only to himself. On the issue of a new book, an indemnity should be taken.

If the original book, whether a current account or deposit one, is subsequently discovered, the banker should cancel one of the two and retain possession of it.

LOST PROBATE. In the event of a probate being lost, the court will issue a document called an "exemplification of probate," which has the same effect as the original document.

LOST SHARE CERTIFICATE. The articles of association of a company usually provide that a shareholder who has lost his certificate may obtain a fresh one, on giving such an indemnity as the directors require. A company should exercise great care in issuing a new certificate as the old certificate may have been deposited elsewhere as security for a loan.

Likewise, a banker should only give an indemnity on behalf of a customer for this purpose when the latter's counter indemnity is undoubted, for if the lost certificate comes to light in the hands of a party with a charge on it, the company must recognise the latter's claim.

LOST STOCK CERTIFICATE. As to the requirements of the Bank of England, see under CERTIFICATE.

LUNACY. (See MENTAL INCAPACITY.)

MACMILLAN REPORT. The Committee on Finance and Industry, set up in November, 1929, under the Chairmanship of Lord Macmillan, published its report in July, 1931 (Cmd. 3897, H.M. Stationery Office, 5s.). It begins with a history of the London money market, the banks, and the currency system of this country; in the second part it puts forward its recommendations.

The practice of "window-dressing" by the Clearing Banks, in their returns and published figures, is condemned. (This practice ceased as from 1st January, 1947. See under WINDOW DRESSING.) It would be a benefit, it is suggested, if the banks and industry worked more closely together. Another charge against the banking system is that it "fails to give clear guidance to the investor when appeals are made to him on behalf of home industry." (Section 387.)

The Report supports tariffs, the raising of international wholesale commodity prices, the maintenance of the gold standard in this country, and a reduction of the value of gold in terms of commodities, the increase of the Bank of England note issue up to £400,000,000, and a gold reserve of £75,000,000, and asks for closer co-operation between the Bank of England and the Clearing Banks.

A more detailed analysis of the Clearing Bank figures than has appeared before ("the Macmillan Return") is from this time sent to the Bank of England and is, in part, reproduced for the public in the *Bank of England Monthly Statistical Summary*, available for purchase since January, 1932, at 12s. a year.

MADE BILL. A bill drawn in this country and payable abroad, if negotiated and indorsed in England by a correspondent of the drawer, is called a made bill. Such a bill thus bears the name of an indorser as well as that of the drawer and drawee. (See DRAWN BILL.)

MAGISTRATE'S ORDER. A magistrate before whom criminal proceedings are being taken may order that the prosecutor may inspect and take copies of entries in the books of a bank at which the defendant keeps his account. (Bankers' Books Evidence Act, Sections 7 and 10.)

MAIL TRANSFER. The transfer by mail of an amount of currency or sterling to another country. The remitter signs an order requesting the banker to transfer the amount by mail, giving the name and address of the payee and stating whether the payment is to be made (*a*) under advice, (*b*) on application and identification (a specimen signature of the payee should, if possible, be supplied), (*c*) to credit of payee's account at . . . bank.

MAKER OF PROMISSORY NOTE. The person who signs a promissory note promising to pay another person is called the "maker."

By Section 88 of the Bills of Exchange Act, 1882—

"The maker of a promissory note by making it—

"(1) Engages that he will pay it according to its tenor;

"(2) Is precluded from denying to a holder in due course the existence of the payee and his then capacity to indorse."

There may be two or more makers, and they may be liable jointly, or jointly and severally, according to the tenor of the note. (Section 85.)

Where a promissory note is in the body of it made payable at a particular place, it must be presented for payment at that place in order to render the maker liable. In any other case, presentment for payment is not necessary in order to render the maker liable. (Section 87 (1).)

The maker of a note is deemed to correspond with the acceptor of a bill. (See PRESENTMENT FOR PAYMENT, PROMISSORY NOTE.)

MAKING-UP DAY. The first day of the settlement on the Stock Exchange.

MALA FIDE. Latin, in bad faith. The opposite to *mala fide* is *bona fide*, in good faith.

MANAGEMENT SHARES. Shares of the same nature as founders' shares, but instead of being held by the founders are intended for the managers of a company to cause them to take a greater interest in making the business a successful one. (See FOUNDERS' SHARES.)

MANDANT, OR MANDATOR. The person who gives a mandate. The party in whose favour it is given is called the mandatory.

MANDATE. An authority in writing by which one person (the mandator) empowers another person (the mandatory) to act on his behalf. If John Brown authorises T. Jones to sign cheques upon his account, the usual form of signature is per pro. (or p.p.) John Brown, T. Jones. The mandate should state that Jones may sign whether the account is in credit or in debit (if that is the wish of Brown) and a specimen of the signature of Jones should be given on the

mandate in the form in which he will sign. Heber Hart in the *Law of Banking* states that "an agent cannot bind his principal by borrowing money, either by overdrawing an account or otherwise, without either an express or implied previous authority, or an authority to be inferred from the subsequent recognition by the principal of his conduct." In cases where the principal has arranged for an overdraft on the account, a mandate would cover the cheques drawn by the agent within that arrangement, in the event of the mandate not including such words as "whether the account is in credit or is overdrawn," but it is a usual practice and it is advisable to include those words in the authority. In the absence of such, or similar words in the mandate, the principal would not be liable for an overdraft created by the agent without the principal's sanction or knowledge. Particulars of the authority should be noted in the ledger against the account to which it refers, and if it is only for a certain period or is limited to drawings up to a certain specified amount, these important points should be very clearly recorded. A mandate by Brown may authorise Jones to sign Brown's name, but the preferable way is, as given above, for Jones to sign "per pro."

It has been held that it is "clearly the duty of a person giving a mandate to take reasonable care that he does not mislead the person to whom the mandate is given." (*Kepitigalla Rubber Estates, Ltd.* v. *The National Bank of India, Ltd.*, [1909] 2 K.B. 1010.)

A mandate is determined by the death, bankruptcy, or insanity of the person, or one of the persons in the case of a joint account, who gave the authority. (See JOINT ACCOUNT.)

A person who has authority to sign for another, has not, as a rule, any power to delegate that authority.

In a mandate for a joint account, the parties should agree to be jointly and severally liable, so that, in the event of the death or bankruptcy of one of them, the banker may, if the account is overdrawn, claim upon his estate. Such an agreement also gives the banker the right, after reasonable notice, to set off a credit balance on any of their private accounts against an overdraft on the joint account.

There is no stamp duty upon a mandate. (See AGENT, COMPANIES, DELEGATION OF AUTHORITY, EXECUTOR, PARTNERSHIPS, PER PRO.)

MANDATORY. One to whom a mandate or an authority is given. The person who gives the mandate is called the mandant or mandator. The relationship of banker and customer is partly that of mandatory and mandant.

A mandatory cannot, unless expressly empowered in the mandate, delegate his authority to another person.

MARGIN. In banks, the difference between the amount of a loan and the value of the security is generally referred to as the margin. When the value of a security falls so that it is no longer in excess of the loan, the margin is said to have "run off." (See ADVANCES.)

MARGINAL LETTER OF CREDIT. A letter of credit, printed upon the margin of a bill form, issued by a banker, authorising the person to whom it is addressed "to draw the annexed bill" at a certain currency for a specified amount, and undertaking to honour the bill if drawn in accordance with the terms of the letter. (See DOCUMENTARY CREDIT.)

MARINE INSURANCE POLICY. Marine insurance is a contract whereby one party, in consideration of a premium paid, undertakes to indemnify the other party against loss from certain perils or sea risks to which his ship or cargo may be exposed.

A policy of marine insurance is usually effected with insurers, called "underwriters." The term "underwriter" is applied because each person who acts as an insurer signs his name at the foot of the policy and states the amount for which he is to be liable. The ship or the goods may be insured either for a certain voyage or during some period of time, and the underwriters by the contract agree to indemnify the insurer against loss in accordance with the terms of the policy.

A person wishing to insure usually employs an insurance broker to arrange the terms of the policy with the underwriters.

The person insured must have an insurable interest in the ship or its cargo, otherwise the contract is not legally binding.

There are several kinds of marine policies, the principal being—

A "valued policy," where the value of the ship or subject insured is stated in the policy. Ships and freights are usually insured under a valued policy.

An "open policy," where the value of the subject insured is not stated in the policy. When a loss occurs the value has to be proved. Goods are usually

included in an open policy. The description in the policy should agree with that in the bill of lading.

There are also—A "Time Policy," that is a policy for a fixed time, a "Voyage Policy," that is for a particular voyage, a "Floating Policy," which insures the subject-matter in whatever ship it may be; and other varieties.

The underwriters are liable for the full amount of the insurance in the event of the ship being totally lost, but in the case of a partial loss the underwriters are usually liable only for two-thirds, the remaining one-third of the loss falling upon the owner of the ship.

As from 1st February, 1938, what is known as the "Waterborne Agreement" came into force among London underwriters, whereby war risk is covered only whilst goods are actually on ship, except that fifteen days are allowed for loading and unloading, and fifteen days for transhipment where such is necessary as from an up-river vessel to an ocean-going boat.

An insurance certificate is sometimes attached to a bill, and is a declaration by an insurance company that the goods are insured under a policy which also covers other goods.

A document of insurance is not a good tender in England under an ordinary c.i.f. contract unless it be an actual policy. (*Scott* v. *Barclays Bank, Ltd.* (1923), 39 T.L.R. 198.) (See DOCUMENTARY CREDIT.)

By the Stamp Act, 1891, as amended by the Finance Act, 1920, the stamp duties are—

POLICY OF SEA INSURANCE	£	s.	d.
(1) Where the premium or consideration does not exceed the rate of 2s. 6d. per centum of the sum insured			1
(2) In any other case			
(*a*) For or upon any voyage—			
Where the sum insured does not exceed £250			3
Exceeds £250 but does not exceed £500			6
Exceeds £500 but does not exceed £750			9
Exceeds £750 but does not exceed £1,000		1	0
Exceeds £1,000, for every £500 and any fractional part of £500			6
(*b*) For time—			
Where the insurance is made for any time not exceeding six months, an amount equal to three times the amount which would be payable if the insurance were made upon a voyage.			
Where the insurance is made for any time exceeding six months and not exceeding twelve months, six times the amount which would be payable if the insurance were made upon a voyage.			

A policy of sea insurance is not valid unless it specifies the particular risk, the names of the subscribers or underwriters, and the sums insured, and is made for a period not exceeding twelve months. (Section 93 (3).)

An insurance policy for a voyage and also for time, or to cover any time beyond thirty days after the ship's arrival, is to be charged with duty as a policy for a voyage and also for time. (Section 94.)

When a banker receives from abroad a bill of exchange with a policy of insurance or an insurance certificate attached, he must see that the policy or the certificate is stamped within ten days of its arrival in this country. The certificate does not require stamping if there is a note upon it that the original policy is stamped.

By the Finance Act, 1901—

"Section 11. (1) Notwithstanding anything contained in the Stamp Act, 1891, a policy of sea insurance made for time may contain a continuation clause as defined in this Section, and such a policy shall not be invalid on the ground only that by reason of the continuation clause it may become available for a period exceeding twelve months.

"(2) There shall be charged on a policy of sea insurance containing such a continuation clause a stamp duty of sixpence in addition to the stamp duty which is otherwise chargeable on the policy.

"(3) If the risk covered by the continuation clause attaches and a new policy is not issued covering the risk, the continuation clause shall be deemed to be a new and separate contract of sea insurance expressed in the policy in which it is contained, but not covered by the stamp thereon, and the policy shall be stamped in respect of that contract accordingly, but may be so stamped without penalty at any time not

exceeding thirty days after the risk has so attached.

"(4) For the purpose of this Section, the expression 'continuation clause' means an agreement to the following or the like effect, namely, that in the event of the ship being at sea or the voyage otherwise not completed on the expiration of the policy, the subject-matter of the insurance shall be held covered until the arrival of the ship, or for a reasonable time thereafter not exceeding thirty days."

By the Revenue Act, 1903—

"Section 8. A policy of insurance made or purporting to be made upon or to cover any ship or vessel, or the machinery or fittings belonging to the ship or vessel whilst under construction, or repair, or on trial, shall be sufficiently stamped for the purposes of the Stamp Act, 1891, and the Acts amending that Act, if stamped as a policy of sea insurance made for a voyage and though made for a time exceeding twelve months, shall not be deemed to be a policy of sea insurance made for time." (See MUTUAL INSURANCE, SHIP, WATERBORNE AGREEMENT.)

MARITAL CONTROL. Where the property of a married woman is subject to the control of the husband it is said to be under marital control, but where the property is for her own separate use it is free from marital control. (See MARRIED WOMAN.)

MARITIME LIEN. A lien which attaches to a vessel and/or its cargo as a result of some liability incurred in respect of a voyage. It is not necessarily a possessory lien and is enforced by legal process in the Admiralty Court. Examples are a lien of seamen for wages; a lien of a master of a ship for wages and disbursement; lien in respect of salvage.

MARKED CHEQUE. Marking cheques takes one of two forms—marking for clearing purposes and marking at the request of the drawer. In connection with local exchanges in country branches, cheques are frequently presented by one banker to another in the same town to be "marked" as being good. If the cheque is all right, the banker on whom it is drawn initials it and hands it back to the banker who has presented it to be "marked." The banker holding the cheque can then rest satisfied that it will be paid when presented through the clearing later on in the day, or, if too late for that day's clearing, through the clearing on the following day. The arrangement is one between the two bankers and has nothing to do either with the drawer, payee, or holder. If further cheques should be presented for payment before the "marked" cheque arrives through the local clearing, and the balance of the customer's account, taking the amount of the "marked" cheque into consideration, will not permit of their payment, the banker is justified in refusing payment of those subsequent cheques. When the banker "marked" the cheque he practically paid it and is entitled to regard it as paid, although, for the personal convenience of the two bankers, the cheque itself is permitted to be passed through the clearing with the other cheques. The "marked" cheque will, of course, be debited to the drawer's account when it comes in, even though the drawer in the interval has died or become bankrupt. The cheque being to all intents and purposes paid when "marked," the drawer cannot stop payment of it after it is "marked."

Instead of "marking" a cheque some bankers pay it, if in order, and give in exchange a clearing voucher to be passed through the next local clearing.

In the Town Clearing, cheques which are too late to catch the last clearing are presented to the drawee bank to be marked. The marking consists of a mere initial on the back of the cheque and amounts to a guarantee that the cheque will be paid if presented through the Town Clearing the next morning. Such marking is constructive payment and the drawer's account can be debited in due course, notwithstanding his decease or countermand of payment meanwhile.

Bankers were occasionally requested by the drawer of a cheque to mark or certify it as good for the amount, as, for example, when the customer desired to settle for the purchase of property or to pay customs duties. In 1920, the Committee of London Clearing Bankers recommended that such marking should be discontinued in favour of the issue of a banker's draft. Where very exceptionally a cheque is marked for a customer, it is the practice to take his authority to debit his account forthwith and to credit a suspense account to which the marked cheque is debited on presentation. The drawer cannot stop payment of a cheque marked at his request.

Chalmers's *Bills of Exchange* says: "At common law there is no objection to the acceptance of a cheque, if the holder likes to take it in lieu of payment, but the Bank Charter Acts would in most cases render this illegal."

In the Privy Council case of *Bank of Baroda, Ltd.* v. *Punjab National Bank, Ltd.*, [1944] 2 All E.R. 83, it was held that marking or certification is neither in form nor effect an acceptance of which the holder or payee can avail himself. It was said that "it would certainly require strong and unmistakable words to amount to the acceptance of a cheque."

In the United States cheques are freely certified by bankers, and such certification is held by law to be equivalent to acceptance. (See CERTIFICATION OF CHEQUES, CHEQUE, MARKING NAMES.)

MARKET OVERT. An open or public market. All shops in the City of London are market overt for the purposes of their own trades, and outside the limits of the city the name is applied to particular places which are set apart for a market by grant or by prescription. When a person buys, in market overt, goods which have been stolen he obtains a good title, unless the thief is afterwards prosecuted and convicted, when the property in the goods revests in the original owner. Sale in market overt is the chief exception to the rule that a purchaser obtains no property in goods of which his transferor was not the owner.

MARKET PARTNERSHIP. A term used on the London Stock Exchange to describe a partnership where two members, who each deal and settle bargains in their own name, notify to the secretary that they hold themselves jointly responsible to the Stock Exchange for all transactions entered into by either of them.

MARKETABLE SECURITY. A marketable security, as, defined by Section 122 of the Stamp Act, 1891, is a "security of such a description as to be capable of being sold in any stock market in the United Kingdom."

MARKING CHEQUES. (See CERTIFICATION OF CHEQUES, MARKED CHEQUES.)

MARKING NAMES. Certain international securities—generally those of the "American" type—may be registered in the names of nominees, such as a member of the Stock Exchange or a banker. The certificates are discharged in blank by the nominee on the reverse side and are then transferable by delivery as with a security payable to bearer. Accordingly the transfer need not be registered with the company.

The London Stock Exchange has compiled a list of firms recognised by the Market as "good marking names" for this purpose of nominee holdings. Shares so registered usually command a slightly better price than those not in a good marking name.

Dividends and other cash or stock distributions and rights to new issues must be collected from the "marking name." These duties are usually undertaken on behalf of the owner by his banker.

The "marking name" makes a charge for its services generally by quoting a rate of exchange for cash distributions which is less favourable than that actually received.

The collecting agent also makes a charge for his services in collecting dividends, etc. The relative certificates are marked on the back with a rubber stamp by the "marking name" to indicate that dividends, etc., have been claimed.

As against the advantages accruing to the owner of having his certificate registered in a "marking name" must be set the receipt direct of dividends, notices as to rights, balance sheets, etc., if the certificate is in his own name; likewise no charges are incurred and the best rates obtained for dividends, etc.

(See AMERICAN SHARE CERTIFICATES.)

MARKSMAN. A person who is unable to write, from any reason, and who signs by a mark, thus ×, in the presence of one or more witnesses. The usual form in such a case is—

	his JOHN × BROWN. mark.
Witness, R. JACKSON, King Street, Leeds, Grocer.	Witness, T. JONES, British Bank, Leeds, Cashier.

A banker generally requires a mark to be witnessed by two persons, particularly if it is in connection with either paying in or withdrawing money, and it is desirable that one of the witnesses should be an outside person who is well known to the bank. If, however, such a witness is not available it is usual for two members of the staff to sign as witnesses. In some banks the cashier who has the transaction in hand may act as one witness, but in other banks both witnesses have to be independent altogether of the transaction.

It is usual for a customer who cannot write, if he is going to draw many cheques upon his account, to give authority to someone to sign cheques per pro., and the matter is best arranged when the account is first opened.

When a deed is executed by "mark," a special form of attestation clause is necessary. (See ATTESTATION.)

In Scotland the execution of a deed by a mark is not valid. It must be executed for the person by a Notary Public or a Justice of the Peace before two witnesses.

MARRIAGE SETTLEMENT. A settlement of property, provided by either or both of the parties to the contract of marriage, and made either before or after the marriage. In the former case it is called an ante-nuptial settlement, and in the latter a post-nuptial. Except in the case of fraud, an ante-nuptial settlement is one made for valuable consideration, the marriage being the consideration. But in the case of a post-nuptial settlement, there is only what is known in law as "good consideration," and the settlement may be avoided in certain cases if the settlor becomes bankrupt within a certain period after the settlement is made. (See SETTLEMENTS—SETTLOR BANKRUPT.)

(See the provisions of the Settled Land Act, 1925, under SETTLED LAND.)

For Stamp Duties see SETTLEMENT.

MARRIED WOMAN. The Married Women's Property Act, 1882, permitted a married woman to hold property as her separate estate and to dispose of such separate estate subject to any restraint on anticipation. Restraint on anticipation occurred where a married woman was prohibited from anticipating the income of settled funds or from charging or alienating the capital. A creditor's remedy was thus confined to a married woman's separate property free from restraint on anticipation, except that by the Bankruptcy Act, 1914, Section 125, a married woman could be made bankrupt if she were in trade or business, whether separately from her husband or not.

A husband was fully liable for his wife's civil wrongs during marriage.

But by the Law Reform (Married Women and Tortfeasors) Act, 1935, Section 1, a married woman shall—

(*a*) be capable of acquiring, holding, and disposing of, any property; and

(*b*) be capable of rendering herself, and being rendered, liable in respect of any tort, contract, debt, or obligation; and

(*c*) be capable of suing and being sued, either in tort or in contract or otherwise; and

(*d*) be subject to the law relating to bankruptcy and to the enforcement of judgments and orders.

in all respects as if she were a feme-sole.

Section 2 says that—

all property which—

(*a*) immediately before the passing of this Act was the separate property of a married woman or held for her separate use in equity; or

(*b*) belongs at the time of her marriage to a woman married after the passing of this Act; or

(*c*) after the passing of this Act is acquired by or devolves upon a married woman,

shall belong to her in all respects as if she were a feme-sole and may be disposed of accordingly.

Existing restraints on anticipation or those imposed in any instrument executed before 1st January, 1936, continued to be, or should in due course become effective. (Section 2.) By Section 3 it was provided that the will of a testator who died after 31st December, 1945, should be deemed to have been executed after 1st January, 1936, notwithstanding its actual date of execution. Thus a statutory limit was put to a testator's imposition of a restraint on anticipation in an instrument executed before 1st January, 1936.

But the Married Women (Restraint on Anticipation) Act, 1949, has abolished all such restraints.

Hence, a married woman can now hold property as if she were unmarried and restraint on anticipation is abolished. She can enter into any contract and be sued for any debt or tort. A creditor can obtain judgment against her personally and has his rights against her property notwithstanding it was subject to a restraint on anticipation imposed before 1936. Section 125 of the Bankruptcy Act, 1914, is repealed and a married woman is subject to bankruptcy law whether in trade or business or not. A husband is no longer liable for his wife's civil wrongs. A husband's liability for debts incurred by his wife for necessaries for herself and his household is left untouched, however.

Where a married woman is adjudged bankrupt, her husband is postponed as to dividend as her creditor until the claims of the other creditors have been met. And where a husband is bankrupt, his wife cannot claim any dividend as a creditor until the claims of the other creditors have been satisfied (Bankruptcy Act, 1924, Section 36 (1) and (2)).

A banker should take care to see that the account of a wife of an undischarged bankrupt is not used for collecting her husband's cheques.

Where a married woman has a joint

account with her husband, her right to any credit balance on his decease is a question of intention on the husband's part. Where the express intention of opening the account in joint names was to make provision for his wife, she can deal with the balance. (*Foley* v. *Foley*, [1911] 1 I.R. 281.) But where the account was opened by the husband for his convenience, the balance cannot be claimed by the wife. (*Marshall* v. *Crutwell* (1875), 20 L.R. Eq. 328.) In practice, a mandate is taken on opening the account wherein it is acknowledged that the account is with benefit to survivor, thus avoiding any doubt as to intention. Where a married woman gives a guarantee for her husband's account she should be separately advised by her solicitor and should acknowledge in writing that she understood the terms of the document and entered into the contract freely and voluntarily. (See GUARANTEE.)

As to the Married Women's Property Act and Life Policies, see under LIFE POLICY.

MARSHALLING SECURITIES. The equitable doctrine which provides that a creditor who has recourse to more than one security of the debtor shall not in exercising his rights prejudice another creditor who is covered by one of the same securities.

Thus where A mortgages two properties X and Y to B and later gives a second mortgage on Y to C, C may demand that the securities be marshalled, i.e. that B's claim shall be satisfied as far as possible from property X, that property Y or as much as is not required to satisfy B's claim be left to satisfy C's mortgage.

The doctrine of marshalling will not be allowed to prejudice a third mortgagee, however.

MATERIAL ALTERATION. Section 64 of the Bills of Exchange Act, 1882, provides that where a bill or acceptance is materially altered without the assent of all parties liable on the bill, the bill is avoided except as against a party who has himself made, authorised, or assented to the alteration, and subsequent indorsers.

Where the alteration is not apparent, however, a holder in due course may enforce payment of the bill according to its original tenor, e.g. a cheque raised from eight pounds to eighty pounds, so that the alteration cannot be detected with reasonable care, would give a holder in due course the right to enforce payment against the drawer for the original sum of eight pounds. Section 64 says that, in particular, alteration of the date, the sum payable, the time of payment, the place of payment and the addition of a place of payment without the acceptor's consent where the bill has been accepted generally, are material alterations. Where a bill was accepted bearing neither date nor drawer's name, and bearing on the top the word "London," the substitution by the drawer when he signed it of "Lausanne" was held not to be an alteration of an existing instrument. (*Foster* v. *Driscoll*, [1929] 1 K.B. 470.) But where, subsequent to completion and execution of a bill, an alteration was made of the place where the bill purported to be drawn so as to make it a foreign bill, it was held to be a material alteration as it altered the rights and liabilities of parties. (*Koch* v. *Dicks*, [1933] 1 K.B. 307.)

Where a solicitor prepared a cheque for signature by executors as drawers, payable to John Prust & Co., and after the cheque was returned to him duly signed by the drawers, added to the payee's name the words "per Cumberbirch & Potts," the name of his firm, it was held to be a material alteration. The drawee banker, notwithstanding that the alteration was not apparent, was liable for having paid the cheque. (*Slingsby* v. *District Bank*, [1932] 1 K.B. 544.)

The trial judge, whilst holding, in this case, that the leaving of space after the payee's name was not contributory negligence on the part of the drawer, hinted, however, that if such cases of loss thereby became common, the drawer might be held to be liable. (See also ALTERATIONS.)

MATE'S RECEIPT. A document acknowledging receipt of goods on board ship, and signed by the mate. It states that the goods are received in good order and condition and gives their description and distinguishing marks, and the name of the shipper, but not usually the name of the consignee.

The mate's receipt is exchanged later for the bill of lading. It is not a document of title and it is not necessary for a shipping company to demand the mate's receipt before issuing the bill of lading, but it is the invariable practice of English companies to issue bills of lading only against production of the relative mate's receipt.

Lord Wright in the Privy Council case of *Nippon Yusen Kaisha* v. *Ramjibon Serowjee* (1938) said: "The mate's receipt is not a document of title to the goods shipped. Its transfer does not pass property in the goods, nor is its possession equivalent to possession

of the goods. It is not conclusive and its statements do not bind the shipowner as do the statements in a bill of lading signed within the Master's authority. It is, however, *prima facie* evidence of the quantity and condition of the goods received and *prima facie* it is the recipient or possessor who is entitled to have the bill of lading issued to him. But if the mate's receipt acknowledges receipt from a shipper other than the person who actually receives the mate's receipt and, in particular, if the property is in that shipper and the shipper has contracted for the freight, the shipowner will *prima facie* be entitled and indeed bound to deliver the bill of lading to that person."

MATURITY. The maturity of a bill of exchange or promissory note is the date upon which it matures or falls due to be paid. (See PRESENTMENT FOR PAYMENT.)

MAUNDY MONEY. The money which the King causes to be distributed on Maundy Thursday—that is, the Thursday in Holy Week—to as many poor men and women as he is years old. The money, which is of the same number of pence as the King's age, consists of four silver coins, a fourpenny piece, a threepenny piece, a twopenny piece, and a penny piece. The coins are not of much use to the recipients, except to sell to anyone who is interested in coins. Bankers were sometimes requested by customers to obtain a set of Maundy money to add to a collection of coins, but the Mint has now discontinued issuing any sets of Maundy money to banks. Originally the bestowal of the Royal Maundy gifts was preceded by a service during which the King in person washed the feet of poor persons in token of humility, but since the reign of James II this part of the ceremony has not been observed. On the occasion of the first distribution of Maundy gifts from the almonry of King George VI, the number of recipients was forty-one of each sex, that being the Sovereign's age, and accordingly forty-one old men and forty-one old women each received forty-one pence of these specially minted coins. The origin of the word Maundy is, by some persons, said to be derived from the Latin words *mandatum novum* (a new commandment) as those were the first words of the anthem which used to be sung in olden times when the King performed the ceremony of washing the feet of the poor people. Another explanation of the origin of the word is that it is derived from the "maunds," or baskets, which contained the bread for distribution to the poor.

As to the standard weight of these coins, see under COINAGE.

MEETING OF CREDITORS. After a receiving order has been made against a debtor he is not immediately adjudged a bankrupt, but a meeting of creditors is held shortly afterwards to consider whether a proposal for a composition or a scheme of arrangement shall be entertained or whether he shall be adjudged bankrupt.

The following are some of the rules in the first schedule of the Bankruptcy Act, 1914, with respect to meetings of creditors—

"1. The first meeting of creditors shall be summoned for a day not later than fourteen days after the date of the receiving order, unless the Court for any special reason deem it expedient that the meeting be summoned for a later day.

"2. The official receiver shall summon the meeting by giving not less than six clear days' notice of the time and place thereof in the *London Gazette* and in a local paper.

"3. The official receiver shall also, as soon as practicable, send to each creditor mentioned in the debtor's statement of affairs, a notice of the time and place of the first meeting of creditors, accompanied by a summary of the debtor's statement of affairs, including the cause of his failure, and any observations thereon which the official receiver may think fit to make; but the proceedings at the first meeting shall not be invalidated by reason of any such notice or summary not having been sent or received before the meeting.

"8. A person shall not be entitled to vote as a creditor at the first or any other meeting of creditors unless he has duly proved a debt provable in bankruptcy to be due to him from the debtor, and the proof has been duly lodged before the time appointed for the meeting.

"9. A creditor shall not vote at any such meeting in respect of any unliquidated or contingent debt, or any debt the value of which is not ascertained.

"10. For the purpose of voting, a secured creditor shall, unless he surrenders his security, state in his proof 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.

"11. A creditor shall not 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 debtor, and against whom a receiving order 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.

"12. It shall be competent to the trustee or to the official receiver, within twenty-eight days after a proof estimating the value of a security as aforesaid has been made use of in voting at any meeting, to 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 centum. Provided, that where a creditor has put a value on such security, he may, at any time before he has been required to give up such security as aforesaid, correct such valuation by a new proof, and deduct such new value from his debt, but in that case such addition of twenty per centum shall not be made if the trustee requires the security to be given up.

"13. If a receiving order is made against one partner of a firm, any creditor to whom that partner is indebted jointly with the other partners of the firm, or any of them, may prove his debt for the purpose of voting at any meeting of creditors, and shall be entitled to vote thereat.

"14. The chairman of a meeting 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 the proof of a creditor should be admitted or rejected he shall mark the proof as objected to and shall allow the creditor to vote, subject to the vote being declared invalid in the event of the objection being sustained.

"15. A creditor may vote either in person or by proxy.

"18. A creditor may give a general proxy to his manager or clerk, or any other person in his regular employment. In such case the instrument of proxy shall state the relation in which the person to act thereunder stands to the creditor.

"20. A proxy shall not be used unless it is deposited with the official receiver or trustee before the meeting at which it is to be used.

"27. No person acting either under a general or 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 debtor otherwise than as a creditor rateably with the other creditors of the debtor. Provided that where any person holds special proxies to vote for the appointment of himself as trustee he may use the said proxies and vote accordingly."

The official receiver, or some person nominated by him, shall be the chairman at the first meeting. (Rule 7.) (See ACT OF BANKRUPTCY, BANKRUPTCY, PUBLIC EXAMINATION OF DEBTOR, RECEIVING ORDER.)

The term "meeting of creditors" also refers to the meeting called by a debtor who is in financial straits, sometimes with a view to getting such creditors to accept a composition. If the debtor at the meeting gives notice of suspension of payment of his debts, he commits an act of bankruptcy. As to what constitutes such a notice, see the case of the *Anglo-South American Bank, Ltd.* v. *Urban District Council of Withernsea* under ACT OF BANKRUPTCY.

MEETINGS, COMPANIES. The Companies Act, 1948, provides as follows—

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 notice 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 sums 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 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 article 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."

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."

MEMORANDUM OF ASSOCIATION. The Memorandum of Association is the charter of a company, and is, except in certain specific cases, the company's unalterable law. A company's Articles of Association are subsidiary to the Memorandum of Association. (See ARTICLES OF ASSOCIATION.)

The following are the provisions contained in the Companies Act, 1948—

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 twe 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 a 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 payments 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 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.

"(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 make 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."

Sanction is given by the Act to alter the memorandum of association in certain ways—

With respect to the objects of the company see Section 5 on page 406.

A company limited by shares, if authorised by its articles, may alter its memorandum to increase its share capital, consolidate its share capital into shares of larger amount, convert paid-up shares into stock and re-convert stock into shares, sub-divide its shares, and cancel certain shares. (For particulars see Section 61 under heading SHARE CAPITAL.) The conditions in the memorandum may, under certain circumstances, be modified so as to reorganise the share capital. (See the provisions of the Companies Act, 1948, under ARRANGEMENT WITH MEMBERS.)

The amount of the share capital and of the

WE, the several persons whose names and addresses are subscribed, are desirous of being formed into a company, in pursuance of this memorandum of association, and we respectively agree to take the number of shares in the capital of the company set opposite our respective names.

Names, Addresses, and Description of Subscribers.			Number of Shares taken by each Subscriber.
"1. John Jones of	in the county of	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. Caesar 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.

27—(B.1535)

shares may be reduced. (See the provisions in Section 66, under REDUCTION OF SHARE CAPITAL.)

Any company may, by special resolution, and with the approval of the Board of Trade, change its name. (See Section 18 under NAME OF COMPANY.)

A company may provide that a specified portion of the uncalled capital shall not be capable of being called up except in the event and for the purposes of the company being wound up. (See Section 64 under COMPANY, UNLIMITED, and 60 under RESERVED LIABILITY.)

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. (Section 203.)

By the Companies Act, 1948, alterations in the memorandum or articles of a company increasing liability to contribute to share capital shall not bind existing members without their consent. (Section 22.)

The specimen memorandum of association given in the First Schedule of the Companies Act, 1948, is—

Table B

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. (For the subscription, see bottom of page 407.)

MEMORANDUM OF DEPOSIT (*or* **LETTER OF DEPOSIT**). A document setting forth the terms under which a deposit of security is made. It may be the written evidence of a pledge (as where bearer bonds are deposited as security); it may accompany a deposit of share certificates, constituting an equitable mortgage as where the shares are left in the depositor's name, or a legal mortgage as where the shares are put into the name of the bank's nominee; it may be given where title deeds are deposited with intent to give a charge over them, as evidence of the equitable mortgage.

The memorandum of deposit taken in respect of Stock Exchange securities usually contains the following features: a declaration that the securities listed in the schedule at the foot have been deposited as security. This settles the question of the depositor's intention and avoids the possibility of a later claim that the items were lodged for safe custody. The debt which the security covers is defined to cover existing and future advances so as to get a continuing security not adversely affected by the operation of the Rule in *Clayton's Case*. The debt will also be phrased to cover all possible liabilities on current account, guarantees, etc. An agreement follows to maintain a specified margin of cover and an admission of the bank's power of sale is given. Reasonable notice of the bank's intention to exercise this power will have to be given unless it is expressed as immediate. If the shares are left in the depositor's name and no transfers have been signed, the power of sale will be ineffectual without recourse to the Court. In some cases, an agreement follows to accept back, not necessarily the identical shares lodged, but shares of the same class and denomination. Otherwise it would appear that where shares are transferred to the bank's nominee, the depositor could demand the return of the identical shares lodged. The schedule of security lodged should be signed by the depositor. Many banks also use a memorandum of deposit without a schedule of specific items, which is phrased to cover all items at any time held by the bank for any purpose whatsoever. The memorandum, if executed under hand, requires a sixpenny stamp impressed within fourteen days of the date of execution, or adhesive, when it must be affixed and cancelled at the time the instrument is executed. Where the memorandum is executed by a limited company under seal, stamping at the rate of 5s. per cent on the amount of the contemplated advance or on the amount of any limit in the form is required. A company can, however, execute the form under the hand of duly authorised officials, and in such a case a certified copy of the authorising resolution should be filed attached to the memorandum.

A memorandum of deposit accompanying a deposit of title deeds will begin with the aforementioned declaration as to the purpose of the deposit—for security and not for

safe custody—and will follow with a charge on the property detailed in the schedule to the memorandum. A continuing security will be given with an undertaking to repay on demand all existing moneys owing and all future sums borrowed so as to avoid the operation of the Rule in *Clayton's Case* diminishing the security. Provision for adequate insurance will be made and immediate powers of sale will be taken. There will also be covenants to execute a legal mortgage if the bank desires to perfect its security, and to execute any necessary documents to convey the property to a purchaser if the bank exercises its power of sale. Enforcement of these covenants, however, may require resort to the Court. Some banks incorporate in the memorandum of deposit an irrevocable power of attorney in favour of an official of the bank to enable a sale to be effectuated; for the same purpose there may be a declaration of trust by the depositor of the security in favour of the bank with power to the bank to appoint fresh trustees. A memorandum of deposit under hand forming an equitable mortgage of deeds requires stamping at the rate of 2s. per cent on the highest advance contemplated or on any limit inserted in the form. If under seal (as in the case of a memorandum incorporating a power of attorney as above), stamping at the rate of 5s. is attracted. A limited company may execute a memorandum under hand as beforementioned. The depositor's execution of the form should be witnessed and the schedule of deeds and documents should be signed by the depositor.

No registration of an equitable mortgage is required where the deeds are deposited, except in the case of a limited company, where registration on the company's register of charges at Bush House is required.

(See also BANKER'S MORTGAGE, MORTGAGE, TITLE DEEDS.)

MEMORANDUM OF SATISFACTION. A notice addressed to the Registrar of Joint Stock Companies, to be entered on the register pursuant to Section 100 of the Companies Act, 1948 (see REGISTRATION OF CHARGES), that a mortgage or charge has been satisfied in whole or in part. The document requires to be impressed with a 5s. Companies' Registration Fee Stamp.

The form of the document is—

The.....Limited hereby gives notice that the [insert here "mortgage" or "charge," "debentures" or "debenture stock" as the case may be] dated the .....day of..... One thousand nine hundred and...., and created by the Company for securing the sum of £..... was satisfied to the extent of £.... on the..... of....., 19....

In witness whereof the common seal of the Company was hereunto affixed the .....day of....., One thousand nine hundred and ..... in the presence of

..... } *Directors.*
..... }

..... *Secretary.*

Accompanying the Memorandum of Satisfaction is a statutory declaration (no stamp) verifying the same: "We ..... of....., a director of the above-named Company, and.....of..... the Secretary of the above-named Company, solemnly and sincerely declare that the particulars contained in the Memorandum of Satisfaction dated.....now produced to us, are true to the best of our knowledge, information and belief. And we make this solemn Declaration, conscientiously believing the same to be true, and by virtue of the provisions of the Statutory Declarations Act, 1835."

"Declared by the said," etc.

The party in whose favour the charge is given has no part in agreeing to the filing of the Memorandum of Satisfaction, but before the Registrar will enter it on the file, he will address a warning notice to the owner of the charge giving him the opportunity of objecting.

By Section 100 the Registrar is now empowered to register a memorandum of satisfaction of part of a debt or part of the property or undertaking charged. Before the Act of 1948, a partial satisfaction could not be registered.

MEMORIAL. When a deed of land requires registration in the deeds registries in Yorkshire, a memorial (or form giving full particulars of the deed) is sent to the Registrar for that purpose. When registered, the deed is marked: "A memorial was registered at the Registry of Deeds at the day of 19 at in the forenoon in volume , page , number ," and the memorandum is sealed and signed by the registrar. Registration fee, 5s.

(See YORKSHIRE REGISTRY OF DEEDS.)

MENTAL INCAPACITY. Where a banker receives notice of a customer's insanity, his authority to pay the latter's cheques is countermanded; likewise, all other authorities and mandates given by the customer are in abeyance.

What amounts to notice of insanity is not always easy to decide, but as a general rule it may be said that where a person is detained in an asylum, as opposed to entering it voluntarily under the provisions of the Mental Treatment Act, 1930, his capacity to act is, at least temporarily, gone.

A person may still be found insane by inquisition, though this is rare; or on the order of a judicial body such as a justice of the peace specially appointed, a judge of the county courts, or a magistrate; or, lastly, on the order of a husband or wife or other relative accompanied by a medical certificate. (See Lunacy Act, 1890, Sections 90–100, (4) and (11) respectively.) Where any of these takes place there is no doubt. More difficulty arises where a person voluntarily submits himself to treatment under the 1930 Act; it would seem that here it is a matter for the medical superintendent's discretion whether the patient should be permitted to act as if there were no question of his mental fitness. All that can be said is that if a banker knows that his customer has voluntarily submitted himself for treatment in this way, it might be as well for him to communicate with the medical superintendent before paying the cheques of such customer.

Where a customer, who is believed to be of unsound mind, is not confined in an institution and is not the subject of an order, a banker is placed in a difficult position as regards his account. Before refusing payment of his customer's cheques, the banker must have something more than gossip to act upon; he must be reasonably satisfied that his customer is incapable of understanding business transactions. A certificate to that effect by two medical practitioners would suffice.

After a customer has been certified insane, no dealings with his account or securities, etc., can take place until the appointment of a Receiver (or in the case of a patient so found by inquisition, the Committee) by the High Court. A Receiver is authorised by the Court to receive and administer the assets of the estate according to the directions of the Court and must produce evidence of his appointment in the shape of the Order of appointment, and the banker should ask for and retain an office copy of the Order bearing the stamp of the High Court. The Order has a threefold purpose: it is evidence of the Receiver's authority, it provides for the disposition of the patient's estate, and it provides a "Lodgment Schedule" detailing what moneys and securities are to be delivered to the Accountant-General of the High Court. The main part of the Order provides for payment of the patient's debts and for the maintenance of the patient and any dependants. Surplus assets are usually directed in the Lodgment Schedule to be handed over to the Accountant-General. Sometimes there is no definite order in the Lodgment Schedule for this to be done, and then a separate Lodgment Order is supplied to the banker.

The terms of an Order of appointment of a Receiver should be strictly followed and, if moneys or securities are held which are not covered by its terms, reference should be made to the Master. Where a customer is certified of unsound mind, a banker may safely give particulars of the account, etc., to a solicitor, who states that he is applying to the High Court for the appointment of a Receiver.

A Receiver should open a separate account suitably earmarked as to the patient's estate. The powers of a Receiver cease immediately on the death of a patient in favour of the latter's personal representative. (*Re Walker*, [1907] 2 Ch. 120.)

The Personal Application Division of the Court of Protection facilitates the administration of the estates of mental patients, especially where the estate is small. The next-of-kin or best friend can by this means be appointed Receiver cheaply and expeditiously.

Where a person of unsound mind is maintained in a public institution, a justice of the peace may make an order for the payment to the Public Assistance Officer of such portion of moneys standing to the patient's credit as is deemed necessary for the latter's support, and the receipt of the Public Assistance Officer will be a sufficient discharge to the banker. (Section 299, Lunacy Act, 1890.)

On notice of the insanity of a guarantor, the principal debtor's account must be stopped. (*Bradford Old Bank* v. *Sutcliffe*, [1918] 34 T.L.R. 619.)

The insanity of a partner does not operate as a dissolution of the firm, but by Section 35 of the Partnership Act, 1890, is ground for petitioning the Court for a dissolution at the instance of a co-partner or the insane partner's receiver. By the Lunacy Act, 1890, the High Court may dissolve a partnership if a partner becomes of unsound mind.

Lunacy may be set up as a defence in an action on a bill as between immediate parties if the plaintiff was aware of the insanity when he took the bill, but it is of no avail

against a holder in due course. (*Imperial Loan Co.* v. *Stone*, [1892] 1 Q.B. 599, C.A.)

Subject to certain provisos to be found in Section 22 of the Limitation Act, 1939, any right of action accruing to a person under a disability (such as unsoundness of mind) may be brought at any time before the expiration of six years from the date when the person ceased to be under a disability, notwithstanding that the period of limitation has expired.

MERCANTILE AGENT. (See under FACTORS ACT.)

MERGER. A merger takes place when the owner of a distinct interest in a property acquires the larger interest of his reversioner. For example, if a leaseholder purchases the freehold, the leasehold interest merges in the freehold.

MESSUAGE. A dwelling-house and any adjoining piece of land.

METROPOLITAN CLEARING (now abolished). The Metropolitan Clearing was instituted in 1907 to cope with the rapidly growing volume of cheques drawn on branch banks in the Metropolis, which hitherto had been collected by means of "walks" systems and through the post. Branch banks outside the Town Clearing area, but situated, broadly speaking, in the London Postal District, comprised the Metropolitan Clearing, and their cheques bore the letter "M" in the bottom left-hand corner.

When, immediately before the outbreak of war, in September, 1939, the London Clearing House was evacuated to Stoke-on-Trent, the Metropolitan Clearing was merged into a General Clearing that was set up as an emergency measure. (See CLEARING HOUSE.) On the return of the Clearing House to London at the end of the 1939–1945 war, the Metropolitan Clearing was not restored, metropolitan cheques still being merged into the General Clearing.

MIDDLE PRICE. On the Stock Exchange a dealer buys at one price and sells at another. If he buys at ten and sells at twelve, the middle price is eleven; that is, the price between the highest and the lowest.

MIDDLESEX REGISTRY OF DEEDS. Until 1937, land in Middlesex was subject to a system of registration of deeds and documents (not of titles). The system was first set up by the Middlesex Registry Act, 1708, and amended by the Land Registry (Middlesex Deeds) Act, 1891, the Law of Property Act, 1925, and the Land Charges Act, 1925. Any conveyance or lease of over twenty-one years, any legal mortgage of land, whether accompanied by the title deeds or not, and any probate or letters of administration concerned with land, required registration, otherwise it was void against any subsequent purchaser or mortgagee for value. Such registration was deemed to be actual notice to all persons for all purposes, and priority of conflicting interests was determined by date order of registration.

Equitable charges, after the Law of Property Act, 1925, were no longer registrable, but if unaccompanied by the relative documents could be registered on the Land Charges Register as a general equitable charge (Class C. iii).

Registration on the Middlesex Deeds Registry was by means of a "memorial" giving short particulars or reciting the instrument at full length. Before lending against Middlesex land it was necessary to search the Register, either personally or by post, when an official search certificate would be issued.

When a mortgage was paid off, the entry was vacated in the Register on production of the instrument itself duly discharged or by the enrolment of a certificate of satisfaction.

By the Land Registration Act, 1925, it was provided that compulsory registration of *title* could be extended by Order in Council without the necessity of a petition from a County Authority, but that no Order should be made until the expiration of ten years from 1st January, 1926. Accordingly, an Order in Council was made on 3rd July, 1936, making registration of title compulsory on sale in the Administrative County of Middlesex on and after 1st January, 1937. To give effect to this Order in view of the existing system of registration of documents, the Land Registration Act, 1936, was passed.

The institution of compulsory registration of title did not mean that forthwith all Middlesex land had to be registered; it is only compulsory on sale. Thus, dealings by way of mortgage still take place by means of unregistered instruments, but they no longer require enrolment on the Middlesex Deeds Registry. Any such mortgages made before 1st January, 1937, however, but not registered on that date, had to be registered within two years of 1st January, 1937.

Hence, mortgages of unregistered Middlesex land are now on exactly an equal footing with those of unregistered land elsewhere; no registration is required anywhere if the relative deeds are held, save in the case of limited companies when registration at Bush

House under Section 95 of the Companies Act, 1948, is required. If the deeds are not held, registration on the Land Charges Register as a Class C. i charge (puisne mortgage) or Class C. iii charge (general equitable charge) will be required according as to whether the charge is legal or equitable. A discharge of an entry in the Register could be made for a period of two years from 1st January, 1937.

Personal searches were abolished in the Middlesex Deeds Registry and official searches only were permissible until 1940, when the registers were closed under the provisions of the Middlesex Deeds Act, 1940. In 1943, however, the registers were re-opened for searches for cases, where deeds and documents had been destroyed by enemy action, to assist in reconstituting titles. For this purpose the registers are housed at the Middlesex Guildhall, Westminster, and the County Hall, Westminster Bridge.

Discharges of entries enrolled on the Registry were accepted for two years as from 1st January, 1937, after which time it was neither necessary nor possible to vacate any entries at the Registry.

MILLING. The indented or ridged edge of a coin. In olden times the edges of coins were frequently clipped or filed by dishonest persons and the clippings or filings sold by weight. In order to prevent that practice, milling was invented. The edge of a coin is also turned up in order that the raised flanges may afford a certain amount of protection to the figures on both sides of the coin. (See COINAGE.)

MINOR INTERESTS INDEX. This was set up at the Land Registry by the Land Registration Act, 1925, for the registration of interests not in land but in equitable interests therein. It is not part of the Land Register but merely an adjunct thereto for registration of items such as mortgages of reversionary interests in registered land. Priority is regulated by date order of registration, but a purchaser of a registered title is not concerned with the Index. (See MORTGAGE OF EQUITABLE INTEREST.)

MINORS. Persons who are below the age of twenty-one. (See INFANTS.)

MINT. Anglo-Saxon *mynet*, a coin. Latin, *Moneta*, a surname of Juno, whose temple was used by the Romans as a mint.

The place where the money of this country is coined. It is situated on Tower Hill, London. Under the control of the Royal Mint, there are branch mints at Melbourne, Sydney, and Perth in Australia, the gold coins of which are legal tender in this country. There is also a branch mint at Ottawa in Canada.

At one time there were mints at Bristol, Chester, Exeter, Norwich, and York. (See BANK OF ENGLAND, COINAGE, MINT PRICE.)

MINT PAR OF EXCHANGE. The Mint Par between any two countries which use the same metal for their standard of coinage is found by comparing a standard coin of each, making the calculation upon the weight and fineness of the precious metal only; in other words the Mint Par between countries A and B is the number of B coins which contain the same quantity of pure gold (or whatever is the standard metal of both countries) as one A coin contains. Between gold standard countries, Mint Par means value for value in pure gold, and between silver standard countries, value for value in pure silver.

The Mint Par between two countries never varies unless one of them alters its coinage regulations, increasing or decreasing the quantity of the precious metal in its standard coin.

Whilst the rate of exchange between any two countries varies, the Mint Par remains unchanged and forms a definite point from which to measure those variations.

A sovereign contains 113 grains of fine gold; the U.S. dollar, since 1st January, 1934, contains $15\frac{5}{21}$ grains nine-tenths fine The mint par on this basis is $\$8.23\frac{3}{4}$ to one sovereign. This, or any other mint par, is of theoretical interest only so long as the gold standard remains in abeyance.

MINT PRICE. The Mint price of a given quantity of bullion is the quantity of coins into which that weight of bullion is divided. The quantity of coins in circulation which is equal to that weight of bullion is its market price, and as coins which are in circulation lose a good deal of weight, more of them will be required than if they were new, and the market price will therefore be above the Mint price. The Mint price of gold bullion is its value in gold coins, and the Mint price of silver bullion is its value in silver coins. An importer of gold could have it coined into sovereigns at the Mint at the rate of 1,869 sovereigns for every 480 ounces of metal of standard fineness—eleven-twelfths fine gold, one-twelfth alloy—the Mint price being thus £3 17s. $10\frac{1}{2}$d. per oz. At the Bank of England notes are given in exchange for bullion at the rate of £3 17s. 9d. per ounce of standard gold. In practice, bullion was taken to the Bank because payment for it is made at once, whereas if the bullion was

left at the Mint some time elapsed before the sovereigns were ready.

By the Gold Standard Act, 1925, the right to tender bullion to the Mint to be coined shall be confined in future, as it has long been confined in practice, to the Bank of England. (See GOLD STANDARD ACT, 1925.)

MINUTE BOOK. The book in which is kept a brief record of the business transacted at the general meetings of the shareholders of a company, and at the ordinary meetings and committee meetings of the directors.

All companies are required by law to keep minutes of the proceedings of their meetings and the meetings of the directors. (See MINUTES.)

MINUTES. With regard to the minutes of proceedings of the general meetings of companies and of the meetings of directors, Section 145 of the Companies Act, 1948, enacts—

"(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."

The minutes of a meeting of directors contain a note of the date and place of meeting, the names of the directors present at such meeting, and a record of all resolutions and proceedings, and of all appointments made by the directors. The minutes are read over to the directors at their next meeting, and, if correct, they are signed, usually by the chairman of that meeting, and a fresh minute made that the minutes of the last meeting were read and signed as correct. (See COMPANIES, DIRECTORS, MEETINGS.)

MISTAKES IN PAYMENT. (See PAYMENT UNDER MISTAKE OF FACT.)

MOIETY. A half. An example of the use of the word is found in a conveyance of property (which is vested in Brown and Jones) when Brown conveys his moiety to Jones.

MONETARY UNION. (See LATIN MONETARY UNION, SCANDINAVIAN MONETARY UNION.)

MONETARY UNIT. The coin in any country which serves as a measure of the value of all the other coins. The unit in this country is the sovereign, in the United States it is the dollar, in Germany the reichsmark, and in France the franc.

MONEY. The standard by which the value of commodities is measured, and the medium by which they are bought and sold. Money and credit, to which it gave birth, form the basis on which the business of banking has been built up. There is probably nothing which is of greater importance in the civilised world than money, and nothing which comes more closely in contact with mankind in every department of life. Not only have all conceivable commodities a monetary value attached to them, but it is customary to ascribe a financial reason as the prime moving cause (either directly or indirectly) in almost every action in which a man is concerned. In the primitive ages there was no money, and when anyone wished to obtain food which belonged to another person, possession had to be obtained by barter; that is, some article, considered of equal value, and of which the person who owned the food was in need, had to be offered in exchange. If one man was rich in food possessions and another in skins, there would be much inconvenience in always arranging a suitable exchange, as the food owner might not be in need of skins. This difficulty led most nations at a very early date, after experience with various substitutes, to adopt metals, particularly gold and silver, as a circulating medium. In the case supposed, the owner of food was then able to exchange his goods for a certain quantity of metal, which metal he could use for the purpose of obtaining from other persons articles which were more useful to him than skins. In the *Iliad*, Homer says that the armour of Diomede was worth only nine oxen, and the armour of Glaucus was worth 100 oxen, which indicates that in those days oxen were regarded as a standard of value.

Cattle were of great importance in the early stages of civilisation, and in several languages the name for money is identical with that of some kind of cattle or domesticated animal. Professor Jevons points out that *pecunia*, the Latin word for money, is derived from *pecus*, cattle; that our word fee is nothing but the Anglo-Saxon *feoh*, meaning alike money and cattle; and that the words capital, chattel, and cattle are derived from the word *capitale*. Kine were called *capitale* because they were counted by the *caput*, or head.

At different periods and in various countries many articles have been used to meet the necessity, which was felt by all,

of having something to act as a measure of value. In India, certain parts of Southern Asia, and in Africa, shells, called cowries, are still used as a currency. Money is represented in Tibet and parts of China by small blocks of compressed tea; in Abyssinia by blocks of rock salt, and in some districts of Africa by dates. Sugar, tobacco, dried cod, dressed leather, furs, pieces of cloth, elephants' teeth, carved wood, and many other objects have been used for the same purpose. Carved pebbles were used by the Ethiopians, and Adam Smith relates that, even in his day (1776), there was a village in Scotland where it was not uncommon for a workman to carry nails instead of money to the baker's shop or the ale-house. Although such articles, as a circulating medium, represent a great advance from the barter state of society, most nations, as already stated, now recognise that the metals, being practically indestructible and not much subject to fluctuations in value, are the most convenient and best fitted to act as money. Silver was used by the Hebrews, and the first mention of money as a medium of exchange is found in Genesis, where Abraham purchased the cave of Machpelah from Ephron the Hittite, and weighed to Ephron "four hundred shekels of silver, current money with the merchant." It would appear that when first the metals, whether iron, copper, gold, or silver, were used they were in rude ingots or bars without any stamp or designation upon them, and when being paid over they had, as in the case of Abraham's famous purchase, to be weighed in scales. The inconvenience of always having to weigh the metals, and the difficulty also of knowing whether the quality of the metal was really what it was supposed to be, ultimately brought about the invention of coins. The Chinese are reported to have made coins as early as 2250 B.C. The ingots which had hitherto been so troublesome, were, by the invention of coins, divided up into pieces of different values so that they could be available for the smallest of purchases and operate as the medium of commerce without the process of weighing, an operation which, in the case of the precious metals, was unreliable and open to misuse. The trouble of assaying the metals was done away with, for the coins at length came to bear upon their faces the Government stamp, which, as a rule, assured the holder that they were of a certain quality of metal. From this brief history of the evolution of money, it is seen that each coin, to the extent of its value, is like an order payable to bearer drawn upon anyone to whom it is presented. The true nature or function of money is the right or title to demand something from others. John Stuart Mill says: "The pounds or shillings which a person receives weekly or yearly are not what constitute his income; they are a sort of tickets or orders which he can present for payment at any shop he pleases, and which entitle him to receive a certain value of any commodity that he makes choice of."

The word "money" is derived from the temple of Juno Moneta, which was used by the Romans as a mint. (See COINAGE, MINT.)

MONEY AT CALL AND SHORT NOTICE. This item follows cash and cheques in course of collection in the marshalling of a bank's liquid resources in its balance sheet.

It comprises advances to stockbrokers and jobbers, and loans to the bill market. Such moneys are repayable on demand or within a few days—within fourteen days in the case of Stock Exchange loans and within seven days in the case of the bill market.

Stockbrokers' loans' rates vary according to the type of securities deposited, and are on a day-to-day basis, an up-to-date list of covering securities being furnished to the lending bank each settling day. Prior to the outbreak of war in 1939, these loans were arranged for varying periods within the fortnightly settlement and bore interest at a fluctuating rate, the maximum being ¾ per cent above Bank Rate. The volume of such loans has been drastically reduced since 1939, but the resumption of contangoes (*q.v.*) may result in an increase in the sums lent.

Stock jobbers borrow on a day-to-day or sometimes a seven-day basis at 1½ per cent.

The bulk of money at call and short notice comprises loans to the bill market mostly on a day-to-day basis and at the most at seven days.

The present rates (1954) for loans to the Discount Market are 1½ per cent against bills and 1½ per cent for short-dated Government Bonds.

MONEYLENDER. The Moneylenders Act of 1900 states that the expression "moneylender" shall include every person whose business is that of moneylending, but shall not include—

1. Any registered society within the meaning of the Friendly Societies Act, 1896, or any society registered or having rules certified under Sections 2 to 4 of that Act, or under the Benefit Building Societies Act, 1836, or the Loan Societies Act, 1840, or

under the Building Societies Acts, 1874 to 1894; or

2. Any body corporate, incorporated or empowered by a special Act of Parliament to lend money in accordance with such special Act; or

3. Any person *bona fide* carrying on the business of banking or insurance, or *bona fide* carrying on any business not having for its primary object the lending of money, in the course of which and for the purposes whereof he lends money; or

4. Any body corporate for the time being exempted from registration under this Act by order of the Board of Trade made and published pursuant to regulations of the Board of Trade. (See USURY.)

The Moneylenders Act, 1927, provides as follows—

"2. (3) Every certificate granted to a moneylender shall show his true name and the name under which, and the address at which, he is authorised by the certificate to carry on business as such, and a certificate shall not authorise a moneylender to carry on business at more than one address, or under more than one name, or under any name which includes the word "bank," or otherwise implies that he carries on banking business.

"4. (3) If a moneylender, for the purposes of his business as such, issues or publishes, or causes to be issued or published, any advertisement, circular or document of any kind whatsoever containing expressions which might reasonably be held to imply that he carries on banking business, he shall on summary conviction be liable to a fine not exceeding one hundred pounds, and on a second or subsequent conviction, in lieu of or in addition to such a fine as aforesaid, to imprisonment for a term not exceeding three months."

MONEY LENT AND LODGED BOOK. A book ruled with various columns so as to show what has been lent by the bank in the way of loans, overdrafts, discounts, overdue bills, etc.; and also to show what has been lodged with the bank on current accounts, deposit accounts, and deposit receipts. It is usually written up to correspond with the weekly branch return to Head Office.

MONEY MARKET. The money market is not a particular place or building where money is bought and sold, but is merely a term embracing the Bank of England, London bankers and bill brokers, the Stock Exchange, and dealers in money and credit who either have money to lend or want to borrow money. The Government borrows large sums in the Money Market by its weekly issues of Treasury Bills by tender and by means of Treasury Deposit Receipts. (See BANK RATE, MONEY AT CALL AND SHORT NOTICE, TREASURY BILLS, TREASURY DEPOSIT RECEIPTS.)

MONEY ORDER. Money orders are issued at any money order office in the United Kingdom and in Eire for sums not exceeding £50, and are valid for twelve months. They can be effectively crossed and are not negotiable instruments. The Post Office is entitled to return money orders at any time after their collection by a bank on the ground of irregularity. There is no statutory protection for banks in respect of the collection of money orders for customers who have no title or a defective title to such orders.

MONEY PAID UNDER MISTAKE OF FACT. (See PAYMENT UNDER MISTAKE OF FACT.)

MONOMETALLISM. The system of currency in which one metal is the standard of value. In England gold is the standard of value and is legal tender for any amount, silver being merely token money. (See BIMETALLISM.)

MORATORIUM. (Latin, *mora*, delay). An extension of time which is sometimes granted by the Government of a country during a financial emergency, postponing the due date for the payment of bills of exchange or other debts. On the outbreak of war with Germany in 1914, a Proclamation was issued on 2nd August, postponing the payment of certain bills of exchange (see ROYAL PROCLAMATION); the Treasury was empowered to suspend the Bank Charter Act; the Monday Bank Holiday (3rd August) was extended till Friday morning to enable the Government to arrange for an emergency issue of £1 and 10s. notes to act as legal tender for payments of any amount. On 6th August the moratorium was extended by Royal Proclamation to certain other payments. This moratorium enabled banks, where necessary, to prevent the undue withdrawal of gold. To overcome certain difficulties the Government agreed to guarantee the Bank of England from any loss in discounting bills accepted prior to 4th August.

Where a bill falls due in a foreign country

during the period of a moratorium, the rights of a drawer or an indorser in England are probably subject to the same law as the acceptor. (See the case of *Roquette* v. *Overman* (1875), 10 Q.B.D. 525.)

MORTGAGE. (From *mort*, dead, and *gage*, a pledge.)

A mortgage is a charge which a borrower gives to a lender upon a part or the whole of his property.

There are two kinds of mortgages—

1. Legal Mortgage.
2. Equitable Mortgage (*q.v.*).

With a legal mortgage a banker has control of the property if the borrower fails to repay the advance made to him. But with an equitable mortgage—that is, a deposit of the title deeds with, as a rule, a memorandum of deposit—the banker will, unless the borrower gives a legal mortgage when requested, or unless a power of attorney or a declaration of trust is incorporated in the memorandum, be at much trouble and expense before he obtains the sanction of the Court to dispose of the property.

If a banker takes a mortgage for a fixed amount, it terminates the relation of banker and customer, and the banker's position is that of an ordinary mortgagee. The advance must be made on a separate loan account, and not on a working account. The only entries in the account must be credits in reduction of the loan. As each credit reduces the amount due under the mortgage, any fresh withdrawal would not be covered by the mortgage. As to interest, see under INTEREST. The form of mortgage usually taken by a banker is to secure all moneys at any time owing with a covenant that his right to sell the property shall arise immediately on default, after demand, or after, say, one month following demand. In such a mortgage the relation of banker and customer continues.

In the event of a mortgagor's bankruptcy, if the property is not sufficient to cover the debt, the mortgagee should value the security and claim upon the bankrupt's estate for the difference. (See PROOF OF DEBTS.)

Legal Mortgage Before 1926.

A mortgage of freeholds was effected by the mortgagor conveying the fee simple to the mortgagee, subject to the mortgagor's right to redeem the property. The legal estate was thus transferred to the mortgagee, the mortgagor retaining merely an equitable interest, that is the equity of redemption. When the mortgagor charged the same land to a second mortgagee, the second mortgagee obtained merely an equitable interest, his mortgage being called an equitable mortgage.

A mortgage of a leasehold was made by an assignment to the mortgagee of the unexpired term, or by a sub-demise to the mortgagee for a term less the last few days of the lease.

Legal Mortgage After 1925.

There are only two legal estates in land—

(1) An estate in fee simple absolute in possession (that is freehold).
(2) A term of years absolute (that is leasehold).

The owner of a legal estate is called an "estate owner," and under the law which came into force on 1st January, 1926, he remains an estate owner although he creates a mortgage on his land. The mortgagee also obtains a legal estate in the same land. In freeholds, the mortgagor retains the legal fee simple and the mortgagee obtains by demise a term of years absolute. In leaseholds, the mortgagor retains the term of years absolute and the mortgagee by sub-demise obtains a term of years absolute.

By the Law of Property Act, 1925—

Legal Mortgage of Freeholds.

A mortgage of an estate in fee simple shall only be capable of being effected at law either by—

(1) A demise for a term of years absolute, subject to a provision for cesser on redemption, or by
(2) A charge by deed expressed to be by way of legal mortgage.

Provided that a first mortgagee shall have the same right to the possession of documents as if his security included the fee simple. (Section 85 (1).)

A purported conveyance of an estate in fee simple by way of mortgage, made after 1925, shall operate as a demise of the land to the mortgagee for a term of years absolute, without impeachment for waste, but subject to cesser on redemption, namely—

(*a*) A first or only mortgagee shall take a term of 3,000 years from the date of the mortgage;
(*b*) A second or subsequent mortgagee shall take a term one day longer than the term vested in the first or other mortgagee whose security ranks immediately before that of such second or subsequent mortgagee; and

any such purported conveyance as aforesaid includes an absolute conveyance with a deed of defeasance, and any other assurance which, but for this subsection, would operate in effect to vest the fee simple in a mortgagee subject to redemption. (Section 85 (2).)

This Section applies whether or not the land is registered under the Land Registration Act, 1925, or the mortgage is expressed to be made by way of trust or otherwise (s.s. (3).)

As stated in s.s. (1) a mortgage must be by a demise for a term of years, but any length of time may be selected when making a mortgage, the usual term being 3,000 years.

Second and Subsequent Legal Mortgages of Freeholds.

A second mortgage is made by the grant to the mortgagee of a term of 3,000 years and one day or for a term one day longer than the term held by the first mortgagee. Subsequent mortgagees get grants of terms one day longer than their predecessors.

Thus, first, second, and subsequent legal mortgagees all get legal estates in the shape of long leases and there can be an infinite number of legal mortgages subsisting at the same time on the same parcel of land. Before 1926, this necessarily was not so, for a legal mortgage took the form of the conveyance of the fee simple to the mortgagee who alone possessed a legal estate. The mortgagor was left with an equitable interest in the shape of his right to redeem his mortgage (his equity of redemption) and second and subsequent mortgagees only got equitable mortgages in the shape of a right to any surplus proceeds of sale. This was so notwithstanding that their mortgages were drawn as legal mortgages.

Existing Freehold Mortgages on 1st January, 1926, were converted into mortgages by demise. All land, which was vested in a first or only mortgagee for an estate in fee simple, whether legal or equitable, vested, from 1st January, 1926, in the first or only mortgagee for a term of 3,000 years subject to a provision for cesser corresponding to the right of redemption which before 1926 was subsisting with respect to the fee simple.

A second mortgagee at that date got a term of one day longer than the mortgagee in front of him, that is 3,000 years and one day. A third mortgagee got 3,000 years and two days.

The fee simple which was vested in the mortgagee is, by the Act, transferred to the mortgagor, subject to the mortgage term.

In the case of a sub-mortgage the principal mortgagee takes the term above mentioned and the sub-mortgagee takes a derivative term less by one day. (First Schedule, Part VII.)

Legal Mortgage of Leaseholds.

A mortgage of a term of years absolute (leasehold) shall only be capable of being effected at law either by

(1) A sub-demise for a term of years absolute, less by one day at least than the term vested in the mortgagor, subject to a provision for cesser on redemption, or by

(2) A charge by deed expressed to be by way of legal mortgage. (See below as to this form of charge.)

Where a licence to sub-demise by way of mortgage is required such licence shall not be unreasonably refused. A first mortgagee shall have the same right to the possession of documents as if his security had been effected by assignment.

A mortgage of leaseholds must not be made by assignment.

Any purported assignment of a term of years absolute by way of mortgage, after 1925, shall (to the extent of the estate of the mortgagor) operate as a sub-demise of the leasehold land to the mortgagee for a term of years absolute, subject to cesser on redemption, as follows—

(*a*) The term to be taken by a first and only mortgagee shall be ten days less than the term expressed to be assigned;

(*b*) The term to be taken by a second or subsequent mortgagee shall be one day longer than the term vested in the mortgagee whose security ranks immediately before that of the second or subsequent mortgagee, if the length of the last-mentioned term permits, and in any case for a term less by one day at least than the term expressed to be assigned.

This Section applies whether or not the land is registered under the Land Registration Act, 1925, or the mortgage is made by way of sub-mortgage. (Section 86.)

Second and Subsequent Mortgages of Leaseholds.

A second mortgage takes the form of a sub-lease one day longer than the first mortgagee's term and a third mortgage of

a sub-lease one day longer than the second mortgagee's term and so on. (Law of Property Act, 1925, Section 86 (2).)

Existing Leasehold Mortgages on 1st January, 1926, were converted into mortgages by sub-demise.

All leasehold land which was vested in a first or only mortgagee by way of assignment of a term of years absolute shall from 1st January, 1926, vest in the first or only mortgagee for a term equal to the term assigned by the mortgage less the last ten days thereof, subject to a provision for cesser corresponding to the right of redemption, which, before 1926, was subsisting with respect to the term assigned.

A second or subsequent mortgagee (whether legal or equitable) at that date takes a term of one day longer than the mortgagee in front of him, if that is possible, but in any case for a term less by one day at least than the term assigned by the mortgage.

The term of years which was assigned by the mortgage is transferred by the Act to the mortgagor subject to any derivative mortgage term.

In the case of a sub-mortgage by assignment, the principal mortgagee takes the principal derivative term created by this Schedule and the sub-mortgagee takes a derivative term less by one day than the term vested in the principal mortgagee. (First Schedule, Part VIII.)

An existing mortgage of leaseholds by sub-demise is not affected by the Act.

Puisne Mortgage.

A legal mortgage which is not protected by the deposit of the relative title deeds. A second mortgage is usually, but not necessarily, a puisne mortgage. A puisne mortgage may be protected as to priority by registration as such as a Class C. i charge on the Land Charges Register. (See later in this article under *Registration of Mortgages* and also under LAND REGISTRATION.)

A mortgage affecting a legal estate, made before 1926, which is not protected by a deposit of documents of title, or by registration as a land charge, shall not as against a purchaser without notice thereof, obtain any benefit by reason of being converted into a legal mortgage by the Act, but shall, in favour of such purchaser, be deemed to remain an equitable interest. (First Schedule, Part VII (6) and Part VIII (5).)

Charge by way of Legal Mortgage.

The Law of Property Act, 1925, provides for an alternative form of mortgage of freeholds or leaseholds by deed expressed to be a charge by way of legal mortgage. The mortgagee thereby gets the same protection, powers, and remedies as if a mortgage term for 3,000 years had been created. The advantages of this method are brevity and simplicity; a common form can be used for freeholds or leaseholds and a statutory form is given in the Fifth Schedule to the Act. By Section 206 there is statutory authority as to the sufficiency of such an instrument in respect of form and expression. (See STATUTORY MORTGAGE.)

Transfer of Mortgage.

This is made by deed declaring that the mortgagee transfers the benefit of the mortgage and operates to transfer the right to recover the mortgage debt and interest, all securities held for the mortgage debt, and all the estate in the land vested in the transferor. (Section 114, Law of Property Act, 1925.)

There is a second method available under Section 115 (2), which provides that where the mortgage debt is repaid by someone other than the owner of the equity of redemption, the statutory receipt will operate as a transfer by deed of the benefit of the mortgage. (See STATUTORY RECEIPT.)

Sub-Mortgage.

This is a mortgage of a mortgage as where a mortgagee raises money on his mortgage deeds. It is effected by a grant by the mortgagee to his lender of a term a few days shorter than his own term. (See SUB-MORTGAGE.)

Equitable Mortgage.

An equitable mortgage gives no legal estate to the mortgagee; it gives him a charge on the land, an equity in the shape of a right to enforce his right by the aid of the Courts. It is in effect an agreement to give a legal mortgage and the Courts will so interpret it.

An equitable mortgage can be effected by—

(1) A mere deposit of deeds with intent to charge them as security. Whilst Section 53 (1), of the Law of Property Act, 1925, states that no interest in land can be created except by writing signed by the party creating the same or by his agent or by will or by operation of law, Section 55 provides that this does not affect the operation of

law relating to part performance. The Courts have always held that on the ground of part performance a mere deposit of deeds as security creates an equitable charge.

(2) Writing under hand expressed to charge the land unaccompanied by the relative deeds. Such a mortgage will require registration as a general equitable charge Class C. iii on the Land Charges Register. (See under *Registration* in this article.)

(3) A memorandum in writing creating a charge on the land accompanied by the deeds.

If the mortgagor will not keep the covenants to convey on request or to give a legal mortgage, the mortgagee's only remedy is in the Courts.

In some bank forms of equitable charge, an irrevocable power of attorney is given appointing an official of the bank to sell on behalf of the mortgagor. This power is not revoked by the death, disability, or bankruptcy of the donor, *in favour of a purchaser*. (Section 126 (1).)

An equitable charge incorporating a power of attorney must be under seal and this attracts stamp duty at the rate of 5s. per cent.

In some cases, a declaration of trust is contained in an equitable charge whereby the mortgagor acknowledges that he holds the property in trust for the bank and empowers the bank to remove him from the trust and appoint one of its officials in his place. (See BANKERS' MORTGAGE, EQUITABLE MORTGAGE, MEMORANDUM OF DEPOSIT.)

Consolidation of Mortgages.

The right to consolidate is not affected by the Act if the right to do so is reserved in one of the mortgages. (See CONSOLIDATION OF MORTGAGES and BANKER'S MORTGAGE.)

Tacking and Further Advances.

Except in regard to further advances, tacking is abolished by the Act. In future, therefore, a third mortgagee cannot, by obtaining a transfer of a first mortgage, secure priority over a second mortgagee. (See TACKING.)

With regard to tacking further advances to a prior mortgage, the Act provides as follows—

(1) A prior mortgagee shall have a right to make further advances to rank in priority to subsequent mortgages (whether legal or equitable)—

(*a*) If an arrangement has been made to that effect with the subsequent mortgagees; or

(*b*) If he had no notice of such subsequent mortgages at the time when the further advance was made by him; or

(*c*) Whether or not he had such notice as aforesaid, where the mortgage imposes an obligation on him to make such further advances.

This subsection applies whether or not the prior mortgage was made expressly for securing further advances.

(2) In relation to the making of further advances after 1925, a mortgagee shall not be deemed to have notice of a mortgage merely by reason that it was registered as a land charge or in a local deeds registry, if it was not so registered at the *time when the original mortgage was created*, or when the last search (if any) by the mortgagee was made, whichever last happened.

This subsection applies only where the prior mortgage was made expressly for securing a current account or other further advances.

(The words in italics were substituted by the Law of Property (Amendment) Act, 1926, for the words "date of the original advance" in the 1925 Act.)

(3) Save in regard to the making of further advances as aforesaid, the right to tack is hereby abolished.

(4) This Section does not apply to charges registered under the Land Registration Act. (Section 94.)

Mortgagee Taking Possession.

The Act does not affect prejudicially the right of a mortgagee to take possession of the land, whether or not his charge is secured by a legal term of years absolute, but the taking of possession does not convert any legal estate of the mortgagor into an equitable interest. (Section 95 (4).) (See MORTGAGEE IN POSSESSION.)

Priority of Mortgages.

Before 1926 a legal mortgagee (there could only be one) had priority over all other interests which of necessity were of an equitable nature only, provided that when he took his mortgage he had no notice of earlier interests. (Non-production of the

relative deeds without a reasonable explanation would have been construed as notice). Equitable mortgagees took priority according to the date order of their mortgages. Since 1926 these rules are no longer applicable owing to the possibility of several legal mortgages existing at one and the same time. Priority now is accorded to the mortgagee—*legal or equitable*— who takes with his mortgage the relative title deeds, provided he has no notice of earlier interests. The only notice that can affect him in this respect is a registration on the Land Charges Register. Section 199 of the Law of Property Act, 1925, makes this clear in subsection (1) which says: "A purchaser shall not be prejudicially affected by notice of any instrument or matter capable of registration under the provisions of the Land Charges Act, 1925, . . . which is void or not enforceable against him under that Act by reason of the non-registration thereof." By Section 205 (1), "purchaser" includes a mortgagee.

Priority of mortgagees who do not obtain the relative title deeds (e.g. because they are in the hands of an earlier mortgagee) is determined not by date order of their mortgage but by date order of registration on the Land Charges Register as a puisne mortgage (legal mortgage) or general equitable charge (equitable mortgage).

Remedies of Legal Mortgagee.

(1) He can sue the mortgagor on his personal covenant, incorporated in the mortgage deed, to repay the debt. This is a useful remedy where the security has depreciated.

(2) He can enter into possession. A mortgagee in possession must account to the mortgagor not only for all rents and profits arising from occupation of the land, but also for all revenues which he might have received if he had used all possible care in the administration of the property.

(3) He can foreclose the mortgage. An order for foreclosure *nisi* will be made by the Court, after default by the mortgagor, fixing a date (usually six months ahead) for repayment. If this does not materialise, an order for foreclosure "absolute" will be made whereby the fee simple is vested in the mortgagee subject to any prior mortgage. Any subsequent mortgage is extinguished. (Law of Property Act, 1925, Section 88 (2).) In the case of a leasehold, a foreclosure order absolute vests the leasehold reversion and any subsequent mortgage term in the mortgagee, subject to any prior mortgage. (Section 89 (2).) By Section 91, the Court may make an order for sale in place of a foreclosure order. A mortgagee who gets a foreclosure order is not accountable to the mortgagor for any profits or surplus from a resulting sale.

(4) He may sell under his statutory or express power of sale. Any conveyance thereunder vests the fee simple in the purchaser subject to any prior charge. If leasehold property is concerned, the assignment by the mortgagee vests in the purchaser the leasehold reversion.

Under Section 101 (1), a power of sale arises where the mortgagor is three months in arrear with principal repayments or two months in arrear with interest payments or has broken any covenant in the mortgage. A bank form of mortgage, however, usually provides for an immediate power of sale on default (or on default for one month). (See BANKER'S MORTGAGE.) The proceeds of sale must be applied as follows—

(*a*) In payment of any prior mortgages.
(*b*) In payment of the costs of sale.
(*c*) In payment of the mortgage debt and interest.
(*d*) In payment of any surplus to the mortgagor *or any subsequent mortgagees*. Hence a search on the Land Charges Register must be made before parting with any surplus proceeds of sale. (See under *Searches* in this article.)

(5) He may appoint a Receiver of Rents. Power to appoint a Receiver only arises if a power of sale has arisen. The appointment of a Receiver must be in writing but need not be by deed. A Receiver is deemed to be the agent of the mortgagor.

A receiver must apply the income from the property as follows—

(*a*) In payment of rent, rates, and taxes, etc., for which the mortgagor is liable.
(*b*) In payment of interest on prior mortgages.
(*c*) In payment of fire insurance premiums, repairs, and Receiver's remuneration.
(*d*) In payment of interest on the mortgage debt.
(*e*) In reduction of the mortgage debt.

A bank usually appoints a Receiver where the property is let and it is not possible to effect an immediate sale.

Bankruptcy of Mortgagor.

The mortgagee's power to sell or appoint a receiver shall not be exercised only on account of the mortgagor committing an act of bankruptcy or being adjudged a bankrupt,

without the leave of the Court. This applies only where the mortgage deed is executed after 1925. (Section 110.)

Discharge of Legal Mortgage.

A receipt indorsed on, written at the foot of, or annexed to, a mortgage for all money secured, which states the name of the person who pays the money and is executed by the mortgagee shall operate, without any reconveyance, as a discharge of the mortgage. (Section 115 (1).) (See STATUTORY RECEIPT.)

This Section does not affect the right of any person to require a re-assignment, surrender, release, or transfer to be executed in lieu of a receipt. (Section 115 (4).)

The receipt is liable to the same duty as if it were a reconveyance under seal.

A banker's mortgage is usually worded so as to form a security for "all money" owing to the bank by the mortgagor. If the mortgagor's advance is being totally repaid, a receipt, indorsed by the bank on the mortgage, for "all money thereby secured" would be in order; but a receipt for "all money thereby secured" would not be appropriate if the bank was merely releasing a part of its security, or exchanging one security for another, and the account continued to be overdrawn. Instead of the receipt, some banks indorse on the mortgage a reconveyance, by which the premises vested in the bank by the mortgage are surrendered and conveyed unto the mortgagor "freed and discharged from all moneys secured by the mortgage."

"Where by the receipt the money appears to have been paid by a person who is not entitled to the immediate equity of redemption, the receipt shall operate as if the benefit of the mortgage had by deed been transferred to him, unless—

"(*a*) it is otherwise expressly provided; or

"(*b*) the mortgage is paid off out of capital money, or other money in the hands of a personal representative or trustee properly applicable for the discharge of the mortgage, and it is not expressly provided that the receipt is to operate as a transfer." (Section 115 (2).)

For example, if a mortgage by Brown to Jones is discharged by Robinson, the mortgage deed may be indorsed as follows—

"The within named Jones hereby acknowledges that all money secured by the within written mortgage, including interest and costs, has been paid. The said money has been paid by Robinson of . . . ."

Such a receipt operates as if the benefit of the mortgage has by deed been transferred to Robinson.

When an overdrawn account is transferred from one bank to another, if the security held is a mortgage, the mortgage should be reconveyed by the old bank to the customer and a fresh mortgage given to the new bank. If the old mortgage is discharged by a receipt showing that the money was paid by the new bank, it would, as stated above, operate as a transfer of the mortgage to the new bank, but the new bank could hold the mortgage merely for the specific amount which was paid to the old bank. That amount would require to be debited to a loan account, and the only transactions that could be made would be payments in permanent reduction of the loan. If the amount were debited to a current account, each credit would go to reduce the amount of the mortgage, and each withdrawal would form an unsecured overdraft. (See CLAYTON'S CASE.)

This Section does not apply to the discharge of a charge registered under the Land Registration Act, 1925. (Section 115 (10).)

Cesser of Mortgage Terms.

When the money secured by a mortgage has been discharged the mortgage term becomes a satisfied term and ceases. (Section 116.)

When a mortgage is discharged the deeds are returned to the mortgagor. By Section 96 (2), a mortgagee shall not be liable if he delivers the deeds to the person not having the best right thereto unless he has notice of the claim of a person having a better right. To this subsection the following words were added by the Law of Property (Amendment) Act, 1926: "In this subsection 'notice' does not include notice implied by reason of registration under the Land Charges Act, 1925, or in a local deeds register." "Notice," therefore, in that subsection means actual notice, and the mortgagee (without any notice from a second mortgagee) need not require a search to be made in the Land Registry, or a local deeds registry, to ascertain if a second mortgage has been registered, before he returns the deeds to the mortgagor. A second mortgagee should give the prior mortgagee notice of his charge in writing.

Possession of Title Deeds.

Where a banker is in possession of the title deeds either with a legal mortgage or a memorandum of deposit he is, as a general rule, in a safe position, as before any person can deal with the legal estate he must first ascertain where the title deeds are. The effect of the possession of title deeds is given in Section 13—

"This Act shall not prejudicially affect the right or interest of any person arising out of or consequent on the possession by him of any documents relating to a legal estate in land, nor affect any question arising out of or consequent upon any omission to obtain or any absence of possession by any person of any documents relating to a legal estate in land."

In connection with a banker's safe position see also Section 94 *ante*.

Statutory Mortgages.

Short forms of mortgages are set out in the Act and certain provisions are deemed to be included in such a mortgage deed. (See STATUTORY MORTGAGE.)

Registration of Mortgages.

Legal and equitable mortgages by deposit of title deeds do not require registration as land charges.

Legal and equitable mortgages without a deposit of deeds, or all the material deeds, require to be registered as land charges, and they rank according to the date of registration. (Section 97.)

The registration as a land charge constitutes actual notice of such instrument to all persons and for all purposes connected with the land affected from the date of registration and so long as the registration continues in force. This Section applies without prejudice to the provisions (see Section 97 respecting the making of further advances by a mortgagee). (Section 198.)

The above provisions do not apply to registered land. (See LAND REGISTRATION.)

Mortgages and charges created by companies must be registered under the Companies Act, 1948; and if it is registered land also under the Land Registration Act, 1925.

By the Land Charges Act, 1925, in the case of a charge on land (not registered land) created by a company, registration under the Companies Act, 1948, shall be sufficient, in place of registration under the Land Charges Act. But if the company's land is within the jurisdiction of the Yorkshire Deeds Registries, a legal mortgage must also be registered in the Registry of the particular Riding.

SUMMARY OF REGISTRATIONS.

The mortgages and charges in which a banker is particularly interested are—

Legal Mortgage, protected by a deposit of all the material title deeds.

Puisne Mortgage, that is, a legal mortgage not protected by a deposit of the title deeds or of all the material title deeds.

Equitable Charge, that is, a deposit of all the material title deeds with or without a memorandum of deposit.

General Equitable Charge, that is, an equitable charge which is not protected by a deposit of all the material title deeds.

In England and Wales (except Yorkshire) and the City of York proper:

Register at Land Charges Registry, London—Puisne mortgage; General equitable charge.

No registration is required for—Legal mortgage; Equitable charge.

It is to be noted, with respect to an equitable charge, that a memorandum of deposit usually contains an undertaking to give a legal mortgage when required. This undertaking constitutes an "estate contract" and, as such, is registrable as a land charge under the Land Charges Act, 1925, but so long as a banker retains possession of the deeds he should be safe without registration. (See LAND CHARGES.)

Registration of a land charge must be made on Form L.C. 4 (fee, 1s. 6d. per name). If not made by a solicitor, it must be supported by a statutory declaration by the owner of the charge on form L.C. 9. Vacation of a land charge can be made on Form L.C. 8 (fee, 1s. per name) or on form L.C. 17. If this latter form is used, it need not be sealed by the bank if the instrument of charge is exhibited with it at the Registry, bearing in addition to the statutory receipt the following: "The said bank hereby consents to the cancellation of the Land Charge registered on day of , reference No. in the name of affecting land situated in the County of in the parish or district of ."

Yorkshire. When the land affected is situate in any of the three Ridings (the City of York proper is excluded)—

Legal Mortgage. A verbatim copy, or a memorial, on the prescribed forms, should

be registered in the deeds department of the local registry.

Puisne Mortgage. It may be registered in the deeds department or in the land charges department, but if in the former department it need not also be registered in the latter department.

Mortgages have priority according to the date of registration.

Equitable Mortgage. Not usually registered. The Yorkshire Registries, however, are open to register an equitable mortgage either in the deeds department or, as an "estate contract," in the land charges department or, if desired, in both departments. (See under YORKSHIRE REGISTRY OF DEEDS.)

General Equitable Charge. Register in the land charges department of the local registry.

Charges by Companies. Register with the Registrar of Companies all mortgages and charges (legal or equitable) whether accompanied by the deeds or not on any land, wherever situate, within twenty-one days from the date of creation of the mortgage. Such registration of a land charge takes the place of registration under the Land Charges Act, 1925.

Where the land is in Yorkshire, register in the local registry (in addition to the registration with the Registrar of Companies): Legal mortgage; Puisne mortgage; each debenture giving a legal charge on land, unless a covering Trust Deed is registered.

Registered Land. See below.

(See REGISTRATION OF CHARGES.)

Industrial and Provident Societies Act.

Friendly Societies Act.

Societies registered under these Acts do not come within the scope of the Companies Act, 1948, and therefore a charge does not require registration with the Registrar of Companies.

As to a charge on farming stock by an Industrial and Provident Society see AGRICULTURAL CREDITS ACT, Section 14.

Registered Land (that is, land registered under the Land Registration Act, 1925). It is not within the provisions of the Land Charges Act, 1925.

A charge must be registered at the Land Registry, London.

Where a land certificate, or a certificate of charge, is deposited as security, and it is not proposed to take a registered charge, give notice of deposit to the Land Registry.

Where a mortgage is effected as though the land were unregistered land, the mortgage must be protected on the register by a caution.

A charge by a company must, in addition, be registered with the Registrar of Companies.

Registered land is exempt from registration in the Yorkshire Deed Registries.

(See LAND REGISTRATION.)

Priority Notice. A priority notice of the registration of a contemplated charge under the Land Charges Act, 1925, may be given at least fourteen days before the registration is to take effect. (See under LAND CHARGES.)

SUMMARY OF SEARCHES.

In taking a security on land, it is subject to any mortgage or charge which has been registered. Search should, therefore, always be made at the Land Charges Registry, London, to ascertain if there is any existing registered charge against the borrower.

When the land is in Yorkshire, search at the Deeds Department and also at the Land Charges Department of the appropriate Yorkshire Registry. (Instruments such as bankruptcy petitions, receiving orders, etc., are registrable under the Land Charges Act, 1925, only at the Land Charges Registry, London, but if any land within the three Ridings is affected by those instruments, they are, being Orders of Court, accepted for enrolment in the Deeds Department of the Yorkshire Registry.)

Where building sites and new properties are concerned the Local Land Charges Registers should be searched for road charges and town-planning schemes, the register of the County Authority as well as the Rural, Urban, or Municipal Authority's register.

Where a limited company is concerned, a search must also be made on the company's file kept by the Registrar of Companies at Bush House.

Searches on the Land Charges Register should be made against the names of all persons through whom a title is being made. In searching against the name of a married woman, search should also be made against her maiden name, if she owned the land prior to her marriage. Where a person has changed his address, or has two addresses, search should be made against his name at each address. A search against a firm should be made against the name of each partner.

Where a mortgage is taken from executors, administrators, or trustees, a search should

be made against each executor, administrator, or trustee, as well as against the deceased or the creator of the settlement. The deceased may have charged the property before his death; subsequent dealings by executors, etc., are registered under their own names as they are "estate owners." A search, however, under one executor's name should normally disclose any charges.

A search is made in the alphabetical index at the registry against the owner of the land. If that search shows that something is registered against his name, then an application should be made for an office copy of the entry in the register.

A search may be made personally, but the better way is to apply on Form L.C. 11 for a certificate of official search (fee, 1s. 6d. per name). Anyone obtaining that official certificate is protected against any loss that may arise from error in the Certificate. (Land Charges Act, 1925, Section 17.) By the Law of Property (Amendment) Act, 1926, when a purchaser (which includes a mortgagee) has obtained an official certificate, any entry made in the register after the date of the purchase, shall not, if the purchase is completed before the expiration of the fourteenth day after the date of the certificate, affect the purchaser. By the Yorkshire Registries Act, 1884, Section 21, a certificate of official search in the Deeds Department can be produced in Court as evidence.

In taking title deeds as security there should, strictly, be a certificate of an official search along with the deeds against each person who has been interested in the land since 1925. The absence of a certificate may mean that some purchaser failed to make a search and, possibly, to discover a registered charge.

When deeds are no longer required as security, they may be given up to the person who deposited them without searching the register. A banker, however, must not disregard any express notice that he may have received from a second mortgagee, and he should obtain written instructions from the mortgagor to hand the deeds to the second mortgagee.

Title deeds may be returned to a company without making a search on the company's file at Bush House.

When a bank sells mortgaged property under its power of sale, a search should be made before paying over any surplus proceeds to the mortgagor, for, if the search reveals another interested person, the surplus must be held by the bank in trust for that person.

In the case of registered land a search should be made at the Land Registry. Unless the land certificate is produced at the time of the search, the written authority of the registered proprietor is necessary.

It must be understood that in the Stamp Act, the 5s. per cent rate applies to mortgages under seal (which may include an equitable mortgage) and the 2s. per cent rate applies to mortgages under hand.

By the Stamp Act, 1891 (amended), the stamp duties are—

MORTGAGE, BOND, DEBENTURE, COVENANT (except a marketable security otherwise specially charged with duty), and WARRANT OF ATTORNEY to confess and enter up judgment.	£	s.	d.
(1) Being the only or principal or primary security (other than an equitable mortgage) for the payment or repayment of money—			
Not exceeding £10 . .			6
Exceeding—			
£10 and not exceeding £25		1	4
£25 ,, ,, £50		2	6
£50 ,, ,, £100		5	0
£100 ,, ,, £150		7	6
£150 ,, ,, £200		10	0
£200 ,, ,, £250		12	6
£250 ,, ,, £300		15	0
For every £100, and also for any fractional part of £100, of the amount secured . . .		5	0
(2) Being a collateral, or auxiliary, or additional, or substituted security (other than an equitable mortgage), or by way of further assurance for the above-mentioned purpose where the principal or primary security is duly stamped:			
For every £100, and also for any fractional part of £100, of the amount secured . . .		1	0
By Section 7 of the Revenue Act, 1903, the total duty payable under this head is not to exceed 10s.			
[The collateral security should also bear a			

	£ s. d.
duty paid stamp. (See DENOTING STAMPS.)]	
(3) Being an equitable mortgage: For every £100, and any fractional part of £100, of the amount secured .	2 0
(4) TRANSFER, ASSIGNMENT, DISPOSITION, or ASSIGNATION of any mortgage, bond, debenture, or covenant (except a marketable security), or of any money or stock secured by any such instrument, or by any warrant of attorney to enter up judgment, or by any judgment: For every £100, and also for any fractional part of £100, of the amount transferred, assigned, or disposed, exclusive of interest which is not in arrear	1 0
And also where any further money is added to the money already secured	The same duty as a principal security for such further money.
(5) RECONVEYANCE, RELEASE, DISCHARGE, SURRENDER, RESURRENDER, WARRANT TO VACATE, or RENUNCIATION of any such security as aforesaid, or of the benefit thereof, or of the money thereby secured: For every £100, and also for any fractional part of £100, of the total amount or value of the money at any time secured . . .	1 0

Maximum in case of reconveyance of a collateral security, provided that the reconveyance of the primary security has been duly stamped, 10s.

Since 1st January, 1926, a receipt indorsed on a mortgage, when the mortgage is discharged, operates as a reconveyance. The receipt is subject to the same duty as a reconveyance.

A receipt by a building society, indorsed upon a mortgage, is exempt from stamp duty. (See BUILDING SOCIETY.)

In the case of a conveyance (consideration £1,000) from Brown and Jones as tenants in common to Jones, subject to a mortgage of £5,000, the duty is chargeable upon the consideration and half the amount of the mortgage debt—

£1,000 = consideration
2,500 = half of mortgage

£3,500. (See CONVEYANCE.)

The following are the Sections of the Stamp Act, 1891, relating to mortgages, etc.

Meaning of "Mortgage."

"86. (1) For the purposes of this Act the expression 'mortgage' means a security by way of mortgage for the payment of any definite and certain sum of money advanced or lent at the time, or previously due and owing, or forborne to be paid, being payable, or for the repayment of money to be thereafter lent, advanced, or paid, or which may become due upon an account current, together with any sum already advanced or due, or without, as the case may be;

"And includes—

"(*a*) Conditional surrender by way of mortgage, further charge, wadset, and heritable bond, disposition, assignation, or tack in security, and eik to a reversion of or affecting any lands, estate, or property, real or personal, heritable or movable, whatsoever: and

"(*b*) Any deed containing an obligation to infeft any person in an annual rent, or in lands or other heritable subjects in Scotland, under a clause of reversion, but without any personal bond or obligation therein contained for payment of the money or stock intended to be secured: and

"(*c*) Any conveyance of any lands, estate, or property whatsoever in trust to be sold or otherwise converted into money, intended only as a security, and redeemable before the sale or other disposal thereof, either by

express stipulation or otherwise, except where the conveyance is made for the benefit of creditors generally, or for the benefit of creditors specified who accept the provision made for payment of their debts, in full satisfaction thereof, or who exceed five in number: and

"(*d*) Any defeasance, letter of reversion, back bond, declaration, or other deed or writing for defeating or making redeemable or explaining or qualifying any conveyance, transfer, disposition, assignation, or tack of any lands, estate, or property whatsoever, apparently absolute, but intended only as a security: and

"(*e*) Any agreement (other than an agreement chargeable with duty as an equitable mortgage), contract, or bond accompanied with a deposit of title deeds for making a mortgage, wadset, or any other security or conveyance as aforesaid of any lands, estate, or property comprised in the title deeds, or for pledging or charging the same as a security: and

"(*f*) Any deed whereby a real burden is declared or created on lands or heritable subjects in Scotland: and

"(*g*) Any deed operating as a mortgage of any stock or marketable security.

"(2) For the purpose of this Act the expression 'equitable mortgage' means an agreement or memorandum, under hand only, relating to the deposit of any title deeds or instruments constituting or being evidence of the title to any property whatever (other than stock or marketable security), or creating a charge on such property."

With reference to the word "property" in this subsection, "in administration 'property' is not considered to include goods, and a memorandum of deposit of bills of lading or dock warrants is not within the charge." "A power of sale superadded to such a pledge does not make it a mortgage." (Alpe's *Law of Stamp Duties*.)

(See EQUITABLE MORTGAGE.)

Direction as to Duty in Certain Cases.

"87. (1) A security for the transfer or retransfer of any stock is to be charged with the same duty as a similar security for a sum of money equal in amount to the value of the stock; and a transfer, assignment, disposition, or assignation of any such security, and a reconveyance, release, discharge, surrender, resurrender, warrant to vacate, or renunciation of any such security, is to be charged with the same duty as an instrument of the same description relating to a sum of money equal in amount to the value of the stock.

"(2) A security for the payment of any rent charge, annuity, or periodical payments, by way of repayment, or in satisfaction or discharge of any loan, advance, or payment intended to be so repaid, satisfied, or discharged, is to be charged with the same duty as a similar security for the payment of the sum of money so lent, advanced, or paid.

"(3) A transfer of a duly stamped security, and a security by way of further charge for money or stock, added to money or stock previously secured by a duly stamped instrument, is not to be charged with any duty by reason of its containing any further or additional security for the money or stock transferred or previously secured, or the interest or dividends thereof, or any new covenant, proviso, power, stipulation, or agreement in relation thereto, or any further assurance of the property comprised in the transferred or previous security.

"(4) Where any copyhold or customary lands or hereditaments are mortgaged alone by means of a conditional surrender or grant, the *ad valorem* duty is to be charged on the surrender or grant, if made out of court, or the memorandum thereof, and on the copy of court roll of the surrender or grant, if made in court.

"(5) Where any copyhold or customary lands or hereditaments are mortgaged, together with other property, for securing the same money or the same stock, the *ad valorem* duty is to be charged on the instrument relating to the other property, and the surrender or grant, or the memorandum thereof, or the copy of court roll of the surrender or grant, as the case may be, is not to be charged with any higher duty than ten shillings.

"(6) An instrument chargeable with *ad valorem* duty as a mortgage is not to be charged with any further duty by reason of the equity of redemption in the mortgaged property being thereby conveyed or limited in any other manner than to a purchaser, or in trust for, or according to the direction of, a purchaser.

Security for Future Advances, how to be Charged.

"88. (1) A security for the payment or repayment of money to be lent, advanced, or paid, or which may become due upon an account current, either with or without money previously due, is to be charged, where the total amount secured or to be ultimately recoverable is in any way limited, with the same duty as a security for the amount so limited.

"(2) Where such total amount is unlimited, the security is to be available for such an amount only as the *ad valorem* duty impressed thereon extends to cover, but where any advance or loan is made in excess of the amount covered by that duty the security shall for the purpose of stamp duty be deemed to be a new and separate instrument, bearing date on the day on which the advance or loan is made.

"(3) Provided that no money to be advanced for the insurance of any property comprised in the security against damage by fire, or for keeping up any policy of life insurance comprised in the security, or for effecting in lieu thereof any new policy, or for the renewal of any grant or lease of any property comprised in the security upon the dropping of any life whereon the property is held, shall be reckoned as forming part of the amount in respect whereof the security is chargeable with *ad valorem* duty.

Exemption from Stamp Duty in Favour of Benefit Building Societies Restricted.

"89. The exemption from stamp duty conferred by the Act of the Session held in the sixth and seventh years of King William the Fourth, chapter thirty-two, for the regulation of benefit building societies, shall not extend to any mortgage made after the thirty-first day of July one thousand eight hundred and sixty-eight, except a mortgage by a member of a benefit building society for securing the repayment to the society of money not exceeding five hundred pounds."

A mortgage must be stamped within thirty days of the date of the deed, or if from abroad within thirty days from its arrival in this country. The same time is allowed for further stamping a banker's mortgage, where the amount is not limited, for an additional overdraft, dating from the time the extra advance is taken.

The validity of a legal mortgage is not affected merely by the fact that it is not stamped, but the deed cannot be produced in Court as evidence unless it is properly stamped. An unstamped mortgage may be stamped, after the expiry of the thirty days, on payment of a penalty.

MEMORANDUM BY THE INLAND REVENUE

"*Primary Securities.* The instruments given to banks by their customers to secure overdrafts on current account are, whether legal or equitable mortgages, almost invariably worded as securities for all sums due or to become due to the bank. In such circumstances the earliest of the instruments is the primary security for all advances, and must in the first place be stamped 2s. 6d. (now 5s.) or 1s. (now 2s.) per cent mortgage or equitable mortgage duty on the highest amount at any one time due in respect of the indebtedness secured to the bank up to date (i.e. within thirty days) and with additional duty from time to time, in accordance with the provisions of Section 88 (2) of the Stamp Act, 1891, if the indebtedness should subsequently reach, at any one time, a higher total. If the earliest security be vacated and further advances be afterwards made, the earliest of the remaining securities must be treated as the primary security for the further advances.

"*Collateral Securities.* Each of the other instruments must be treated as a collateral security for the highest amount of overdraft. In the case of legal mortgages, full *ad valorem* duty of 6d. per cent (now 1s.) is chargeable on the highest amount at any one time due in respect of the indebtedness secured up to 31st August, 1903, and similar *ad valorem* duty of 6d. (now 1s.) for every £100, or fraction of £100, increase of this indebtedness after that date; but as to such increased indebtedness arising after 31st August, 1903, with a limit of 10s. in respect thereof, under the provisions of Section 7 of the Revenue Act, 1903. The collateral security or securities should also bear a duty-paid stamp under Section 11 of the Stamp Act, 1891. (See DENOTING STAMPS.) An additional duty-paid stamp can be obtained from time to time, as and when additional duty is impressed on the primary security.

"*Equitable Mortgages.* In the case of equitable mortgages, every security, whether primary or collateral, is chargeable with the duty of 1s. per cent (now 2s.) on the highest amount at any one time due in respect of the indebtedness secured to the bank up to date (i.e. within thirty days) and with additional duty from time to time, in accordance with the provisions of Section 88 (2) of the Stamp Act, 1891, if the indebtedness should subsequently reach, at any one time, a higher total.

"In no case can the value of the security assigned, deposited, or charged, be taken as the basis of assessment for mortgage duty.

"*Reconveyances.* Reconveyance duty is payable on the highest amount of the indebtedness at any one time secured; this duty is exigible on all reconveyances, where the highest amount at any time due on the vacated security is £2,000 or under; where it is over £2,000 only on the final discharge; any partial release in that case attracting 10s.

"If it should be found that duty has been previously paid on a wrong basis, all the instruments should be forwarded to this office with a statement of the highest amount of the customer's indebtedness at any time subsequent to the date of the first instrument, in order that the case may be submitted to the Board of Inland Revenue.

"The reconveyance of a collateral security is liable to a maximum duty of ten shillings if the reconveyance of the primary security is duly stamped. If the *ad valorem* duty is less than ten shillings, the reconveyance of the collateral security should be stamped with *ad valorem* duty" [i.e. 6d. per cent (now 1s.)].—Alpe's *Law of Stamp Duties.*

When a primary security is given up and a fresh security is taken in its place the charge on the substituted security is to be stamped as a collateral security.

When a mortgage (legal or equitable) limits the amount recoverable against the security, the duty is 5s. or 2s. per cent, according as legal or equitable, on that recoverable amount. The amount entered as the limit in the instrument should be the maximum figure at which the security is valued by the banker. When the amount recoverable is limited by the charges, the above rule as to stamping primary and collateral and equitable securities does not apply.

When a legal mortgage is given in fulfilment of an agreement in a memorandum of deposit under *seal* (stamped 5s. per cent), the mortgage is liable to the duty of a substituted security (see Schedule (2) p. 430 i.e. 1s. per cent, with a limit of 10s.; but a legal mortgage in fulfilment of an agreement in a memorandum under hand is liable to the full mortgage duty of 5s. per cent.

(See ATTORNMENT; CONSOLIDATION OF MORTGAGES; DEBTS, ASSIGNMENT OF; EQUITABLE MORTGAGE; EQUITY OF REDEMPTION; FORECLOSURE; LEGAL MORTGAGE; MORTGAGEE IN POSSESSION; NOTICE OF SECOND MORTGAGE; PRIORITIES; RECEIVER; RECONVEYANCE; SECOND MORTGAGE; SHIP; STATUTORY MORTGAGE; TACKING; TITLE DEEDS.)

MORTGAGE CAUTION. An alternative form of mortgage of registered land is provided in Section 106 of the Land Registration Act, 1925, to the method of registering a charge and getting a charge certificate. A registered title can be charged by an ordinary mortgage deed as if it were unregistered land, and the mortgagee can protect himself by lodging a special form of caution at the Land Registry called a "mortgage caution." This caution when lodged must be accompanied by the land certificate, the mortgage instrument, and a certified copy thereof. The caution is entered on the Proprietorship Register, the certified copy of the mortgage filed, and the original returned to the mortgagee. This system is rarely used, however.

MORTGAGE DEBENTURE. A debenture which not only promises to pay a certain sum, but also charges some or all of the property of the company with the payment of the money. (See DEBENTURE.)

MORTGAGE, DEPOSIT OF. (See SUB-MORTGAGE.)

MORTGAGE OF EQUITABLE INTEREST. A party can borrow by way of legal mortgage on his equitable interest in an estate. Thus a beneficiary under a trust for sale, the owner of a reversionary interest, a joint-owner who is a tenant in common in equity, has an interest on which he can raise money. In these cases there is no legal estate to charge; a beneficiary under a trust for sale has rights solely against the proceeds of sale, a remainderman has only his equitable interest, and a joint tenant, although he may hold the legal estate jointly as trustee, can only charge his beneficial interest in the proceeds of sale.

A mortgage of any such equitable interest in land will not be accompanied by the relative title deeds, which are vested in the trustees. Such a mortgage cannot be protected by registration on the Land Charges Register for it is not a charge on land but on the proceeds of sale thereof.

Protection is obtained by giving written notice of the mortgage to the trustees or to a trust corporation appointed for the purpose. An acknowledgment should be obtained and inquiry made of the trustees as to any prior notice received. Priority is determined by date order of the receipt of notice by the trustees. If a joint tenant mortgages his equitable interest, additional protection can be obtained by having a memorandum of the mortgage indorsed on the holding deed.

Where registered land is concerned, a mortgage of an equitable interest therein can be protected by registration on the Minor Interests Index.

Where stocks and shares are concerned, a notice in lieu of distringas can be served on the respective registrars.

It is important to see that a reversionary interest is absolute and not contingent. If the latter, the security should be supported by a life policy to cover the mortgagor's decease.

A mortgage of a reversionary interest is not an ideal security, as the mortgagee cannot foreclose the assets of the estate, he can only sell the reversionary interest to another party. (See REVERSIONARY INTEREST.)

MORTGAGE OF SHIP. (See SHIP.)

MORTGAGE OF STOCK. For stamp duties on mortgage of stock or marketable security under hand only, see AGREEMENT, and Section 23 of Stamp Act, 1891. By deed, see MORTGAGE, and Section 86.

MORTGAGE REGISTER. (See REGISTER OF CHARGES.)

MORTGAGE TERM. The term or period for which land is vested by a mortgage in the mortgagee.

MORTGAGEE. The person in whose favour a mortgage is given.

MORTGAGEE IN POSSESSION. Where a mortgagor has failed to repay the money due under his mortgage, and the mortgagee has taken into his own hands the collection of the rents and management of the property, he is a mortgagee in possession. A mortgagee, however, usually puts in a receiver to manage the estate and collect rents, as the mortgagee thereby avoids the liabilities to which he would be exposed by being a mortgagee in possession.

A bank's mortgage may include a clause by which the mortgagor attorns tenant to the bank, provided that neither the tenancy created by the attornment nor any receipt of rent shall constitute the bank mortgagees in possession or render them liable to account as such. (See ATTORNMENT.)

An equitable mortgagee by deposit of title deeds can take possession only after he has received the sanction of the Court.

By the Law of Property Act, 1925, Section 99, a mortgagee in possession shall have, if and as far as a contrary intention is not expressed in the mortgage deed, or otherwise in writing, power to make from time to time, an agricultural or occupation lease for any term not exceeding twenty-one years, or in the case of a mortgage made after 1925, fifty years; a building lease for any term not exceeding ninety-nine years, or in the case of a mortgage made after 1925, 999 years; and every such lease shall be made to take effect in possession not later than twelve months after its date. Every such lease shall reserve the best rent that can reasonably be obtained, and shall contain a covenant by the lessee for payment of the rent and a condition of re-entry on the rent not being paid within a time therein specified not exceeding thirty days. Every such building lease shall be made in consideration of the lessee, or some person by whose direction the lease is granted, having erected, or agreeing to erect within not more than five years from the date of the lease, buildings, new or additional, or having improved or repaired buildings, or agreeing to improve or repair buildings within that time, or having executed, or agreeing to execute within that time, on the land leased, an improvement for or in connection with

building purposes. A peppercorn rent, or nominal rent, may be made payable for the first five years, or any less part of the term. Nothing in the Law of Property Act, 1925, affects prejudicially the right of a mortgagee to take possession, but the taking of possession does not convert any legal estate of the mortgagor into an equitable interest. (Section 95 (4).) (See MORTGAGE.)

MORTGAGOR. The person who mortgages or charges his property in favour of a party who has lent him money.

MORTMAIN. (Literally "dead hand.") In olden times when real estate passed into the possession of a corporation, it was said to be held in mortmain; that is, in dead hand, because, the corporation having a perpetual existence, any payments which were due when the estate passed from one person to another became non-existent. A corporation may now hold land in practically the same way as an individual, the holding in mortmain being almost obsolete.

MUNICIPAL BANK. Following the Municipal Savings Banks (War Loan Investment) Act, 1916, the first (and only) Municipal Bank was opened in Birmingham under the title of the Birmingham Corporation Savings Bank in 1916. It was later reconstituted under the Birmingham Corporation Act, 1919, and known as the Birmingham Municipal Bank. The management is vested in a committee of the City Council. The Bank is conducted in conformity with the provisions of the Act of 1919, and subsequent Acts, and of Regulations as approved by H.M. Treasury and the Chief Registrar of Friendly Societies.

The Birmingham Municipal Bank is a savings bank, and the objects are—

(*a*) To receive deposits and to guarantee the payment of interest on and the repayment of such deposits.

(*b*) To advance money to any depositor desiring to purchase or acquire a dwelling-house or dwelling-houses in the City of Birmingham, and in any adjoining area with the consent of the local authority thereof, or any interest therein.

(*c*) To advance money to any depositor desiring to purchase or acquire land within the City of Birmingham and in any adjoining area, with the consent of the local authority thereof, for the purpose of an allotment.

(*d*) To utilise and invest the funds of the Bank in accordance with the Acts and these regulations or such other regulations as may be made as therein provided.

Except in the case of a mortgage deed, stamp duty shall not be chargeable on any document made or given in pursuance of the Regulations.

The Bank has a head office and sixty-seven branches. At the 31st March, 1946, balances due to depositors exceeded £74,000,000, and there were 585,000 open accounts.

Powers to establish municipal banks were obtained in 1930 by Birkenhead and Cardiff, but were not exercised.

MUNICIPAL CORPORATION. (See BOROUGH COUNCIL, LOCAL AUTHORITIES.)

MUNIMENTS. (From Latin *munio*, to fortify.) The documents by which rights or claims are fortified or maintained.

MUTILATED CHEQUE OR BILL. If a cheque is presented for payment which has been torn to such an extent as to suggest that it has been so torn with the object of cancelling it, the banker may be liable if he pays, and it is subsequently found that the drawer had torn up the cheque on purpose.

It is customary for the banker to return such a cheque (unless confirmed by the drawer) marked "cheque mutilated" or "cheque torn," but if a note is written upon the cheque by the collecting banker that the cheque was accidentally torn by him, or that he guarantees it, the paying banker usually accepts such an explanation, or guarantee, as sufficient. An unconfirmed explanation by a payee is not as a rule, accepted

MUTILATED NOTES. Mutilated £1 and 10s. Bank of England notes should be presented at the Bank of England. Where a fragment consists of more than half a note and contains the whole of the sentence "I promise to pay the bearer on demand the sum of One Pound (or Ten Shillings)," together with some portion of the signature and one complete print of the series index and of the serial number, together with some portion either of the other series index or the other serial number, such note will ordinarily be paid forthwith: any notes not fulfilling the above requirements will be dealt with according to the fragments presented and the nature of the evidence forthcoming regarding the destruction of the missing parts.

(See legal decisions under BANK OF ENGLAND NOTES.)

MUTUAL DISPOSITION. In the Stamp Act, 1891, the reference to the stamp duty is: MUTUAL DISPOSITION or Conveyance in Scotland. (See EXCHANGE OR EXCAMBION.)

MUTUAL INSURANCE. Where a banker holds a mortgage upon a ship, the insurance policy to be given to him should not be a mutual insurance policy, if he has to be liable for calls. In an insurance of this nature, the liabilities of the company (incurred through damages to the vessels of members, contesting law cases on behalf of members, etc.) are totalled up periodically (say every three months), and equally divided among the subscribers according to the amount of tonnage they have entered in the company. Before a mortgaged vessel is admitted into a mutual society, the mortgagee may be required to give a guarantee that he will be liable for all contributions and other sums which may become payable in respect of the insurance, the guarantee to continue in force for all claims which shall arise so long as he remains a mortgagee. The society may, however, accept a guarantee from some other approved person instead of one from the mortgagee. (See MARINE INSURANCE POLICY, SHIP.)

"NAKED" DEBENTURE. A debenture which is a mere acknowledgment of a debt and which is not secured by a mortgage or charge upon the company's property in any way, is sometimes called a "naked" debenture. (See DEBENTURE.)

NAME DAY. Also called Ticket Day. The second day of the semi-monthly settlement on the Stock Exchange. On this day the names and descriptions of the buyers of securities are passed by the brokers to the jobbers concerned. (See SETTLING DAYS.)

NAME OF COMPANY. The Companies Act, 1948, provides as follows—

"Section 17. (1) No company shall be registered by a name which in the opinion of the Board of Trade is undesirable."

"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 £5 for every day during which the default continues.

"(4) 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.

"(5) 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."

"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, 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."

"Limited" must be the last word in a limited company's name. (See COMPANY LIMITED BY SHARES.)

The omission of the word "limited," as in an acceptance, may render the directors personally liable. Contractions of the word should not be used officially; but in *Stacey & Co., Ltd.* v. *Wallis and others* (1912), 28 T.L.R., where a bill was addressed to J. & T. H. Wallis (Ltd.), it was held that the name was correctly stated, as "Ltd." was such a constant abbreviation that every commercial man of intelligence would know that "limited" was meant.

Companies or associations which do not exist for profit may be licensed by the Board of Trade as limited companies without the addition of "limited" to the name. (See CHARITABLE COMPANIES, COMPANIES.)

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, he shall, unless duly incorporated with limited liability, be liable to a fine not exceeding £5 for every day upon which that title has been used. (Section 439.)

(See REGISTRATION OF BUSINESS NAMES.)

NATIONAL DEBT. The Bank of England manages the National Debt as the agent of

the Government, and the various stocks are transferable in the books of the Bank of England. Holdings of British Government securities may be in the form of—

(1) Registered Stock;

(2) Bonds to bearer.

Before 1943, Government stock could also be held in inscribed form, no registered certificate being issued, the holder's title being an entry in the books of the Bank of England. As and when former inscribed stocks are sold, a registered certificate is issued to the new holder. Until such time such stocks are described, for example, as "3½ War Loan without Certificate."

Stock is not bought or sold by the Bank of England, except on behalf of persons banking with them. A person wishing to buy or sell stock must apply to a stockbroker, or to his banker.

The Finance Act, 1917, provides that the Treasury may, in conjunction with the Bank of England and the Bank of Ireland, make regulations for enabling stockholders to be described in the books of the Bank as trustees, and either as trustees of any particular trust or as trustees without qualification, and for authorising the Bank to act on powers of attorney granted by stockholders as described. Neither the Bank nor any person acquiring any interest in any Government stock shall by reason only of any entry in the books of the Bank in relation to any Government stock, or any stockholder, or of anything in any document relating to Government stock, be affected with notice of any trust, or of the fiduciary character of any stockholder or of any fiduciary obligation attaching to the holding of any Government stock. (Section 37.) Stock may stand in the name or names of the holders of any office or position either with or without their personal names.

The number of names in a British Government stock account is not now limited to four. A holder may have more than one account provided that each one is distinguished either by a number or by such other designation as may be directed by the Bank. In British Government stocks more than four designated accounts in a stockholder's name are permitted.

A holder of stock may be designated as a trustee of a specified trust or as a trustee without specifying a trust. An official description will be acceptable for registration in lieu of a name. Forms of demand for such purposes are no longer required, and it is sufficient for transferees desiring to be so described to indicate the fact on the relative transfer.

Stock cannot be added to a joint account where the death of one of the holders has been notified to the Bank, until the name of the deceased stockholder has been removed from the account. In order that this may be done a special form of request must be signed by the surviving stockholders. Stock may be registered in the name of a corporation or of two or more bodies corporate and the holding will be deemed by the Bank a joint tenancy.

On the death of a sole stockholder, or last survivor in a joint account, the stock shall be transferable by his executors or administrators, notwithstanding any specific bequest thereof, but no stock can be transferred until the probate of the will or letters of administration has or have been left with the Bank for registration.

No stamp duty is payable in respect of any dividend warrant, transfer of registered stock, stock certificate or coupon. (National Debt Act, 1870, Section 71, and Finance Act, 1911.)

Should it be desired that interest be paid in some way other than by post to the first, or sole, stockholder—which is done without application—the necessary instructions must be lodged at the Bank.

Postal interest warrants will be crossed "& Co." and must therefore be presented for payment through a banker. The Bank cannot undertake to cross a warrant payable to a banker with the account to which the interest is to be placed. The stockholder must himself instruct the banker.

Under the provisions of the National Debt Acts, stocks and interest unclaimed for ten years are transferred to the Commissioners for the Reduction of the National Debt, but may be reclaimed by the persons entitled thereto. Interest not claimed for five years is paid to the National Debt Commissioners. (Finance Act, 1921, Section 49, (2).) It may be recovered by the persons entitled to it.

What is called "deed" stock, i.e. registered stock, was provided for by the Finance Act of 1911, and became operative as from 1st April, 1912.

Deeds of transfer must be executed by all the transferors and transferees, the execution by each party being attested by a credible witness. The common form of transfer deed may be used, and no stamp duty is payable. On lodgment of the deed

of transfer at the Bank, the register certificate must be surrendered.

On registration of the transfer a register certificate in the name(s) of the transferee(s) will be issued. When the deed of transfer relates to part only of the stock held by the transferor(s), a register certificate will be issued for the balance of the stock.

Stock certificates to bearer, with coupons attached for the payment of interest, cannot now be obtained in exchange for registered stock. In 1940, holders of stock certificates to bearer were encouraged to register their holdings for safety purposes in view of the danger of invasion.

INSTRUCTIONS FOR ATTESTING THE SIGNATURES ON A DEMAND FOR REGISTRATION OF STOCK AS STOCK TRANSFERABLE BY DEED.—A "credible witness" is required to each signature, who must state his quality, profession, or occupation, and give a permanent address. He should be a person of known position, such as a magistrate, justice of the peace, solicitor, clergyman, or registered medical practitioner; or, failing that, a householder. No stockholder named in this demand, nor the husband or wife of such a stockholder, is a "credible witness" thereto. When a "Demand" is executed out of the United Kingdom, *in addition to attestation by the credible witness*, the signature or signatures must be attested by a British Minister, consul, vice-consul, or other British authority, or by a notary public. When a "Demand" is executed by *mark*, instead of by signature, *the witness must be a person of known position*, such as the minister or churchwarden of the stockholder's parish, a magistrate, justice of the peace, solicitor, or registered medical practitioner; and the *witness must state in writing* that the "Demand" was read over and fully explained to, and was understood by, the stockholder. Should the stockholder be unable to understand the purport of the "Demand" there must be no execution.

As to other points with respect to national finance, see APPROPRIATION ACT, BUDGET, CONSOLIDATED FUND, CONSOLIDATED FUND ACT, DEFICIENCY ADVANCES, FINANCE ACT, FLOATING DEBT, FUNDED DEBT, FUNDING LOAN, INCOME TAX, NATIONAL SAVINGS CERTIFICATES, TERMINABLE ANNUITY, TREASURY BILLS, TREASURY BONDS, TREASURY DEPOSIT RECEIPTS, VICTORY BONDS, WAYS AND MEANS ADVANCES.

NATIONAL SAVINGS CERTIFICATES.

FIRST ISSUE, called "War Savings Certificates," were on sale from February, 1916, at 15s. 6d. per unit. Maximum holding, 500 units. The name was changed to "National Savings Certificates" on 6th December, 1920.

After five years, each unit became worth £1, and after ten years 26s.; thereafter interest is added at 1d. per month per unit until 31st March, 1940.

Average yield over first five years	5¼%
" " " first ten years	5¼%
" " " possible period of twenty-four years	4·04% (tax free)

SECOND ISSUE. From 1st April, 1922, to 29th September, 1923. Issue price was 16s. per unit, worth £1 after five years, and 26s. after ten years.

These may be held until 31st March, 1941, and increase in value by the addition of 1d. per month per unit.

Average yield over first five years	£4 11s. 9d.%
" " " first ten years	£4 19s. 10d.%
" " " possible period of nineteen years	£4 4s 4d.%. (tax free)

THIRD ISSUE. From 1st October, 1923, to 30th June, 1932. The 16s. units increased to £1 after six years, and to 24s. after ten years.

These may be held until 30th June, 1942. After ten years, interest of 2d. per unit is added for each completed period of three months.

Average yield over first six years	£3 15s. 10d.%
" " " first ten years	£4 2s. 11d.%
" " " possible period of nineteen years	£3 7s. 5d.% (tax free)

FOURTH ISSUE. From 2nd August, 1932, to 31st May, 1933. Issued at 16s., became worth £1 at end of seven years, and 23s. at end of eleven years.

They may be retained until eleven years after date of issue of the latest dated certificate of that issue in holder's possession. After the eleventh year, interest is added at the rate of 2d. per unit for each completed period of three months.

Average yield over first seven years	£3 4s. 10d.%
" " " first eleven years	£3 7s. 2d.% (tax free)

FIFTH ISSUE. From 1st June, 1933, to 28th February, 1935. Issued at 16s., became worth £1 at end of eight years, and 23s. at end of twelve years.

Average yield over first eight years	£2 16s. 7d.%
" " " first twelve years	£3 1s. 5d.% tax free)

SIXTH ISSUE. From 1st March, 1935, to 21st November, 1939. Issued at 15s. per unit, become worth £1 at end of ten years.

Average yield over first five years	£2 16s. 4d.%
" " " first ten years	£2 18s. 4d.% (tax free)

SEVENTH ISSUE. From 22nd November, 1939, to 31st March, 1947. Issued at 15s. per unit, becoming worth 20s. 6d. at the end of ten years. Average yield over the full period, £3 3s. 5d. per cent (tax free).

Maximum Holding. No person can hold more than 500 certificates in respect of the above seven issues, whether they are of one issue or a combination of two or more issues. A specific bequest of Savings Certificates can be held additionally however.

One Pound Issue. From 11th January, 1943, to 31st March, 1947. Issued at 20s. per unit, becoming worth 23s. at the end of ten years. Average yield over the full period, £1 18s. 2d. per cent (tax free).

Maximum holding, 250 certificates.

EIGHTH ISSUE. From 1st April, 1947, until further notice. Issued at 10s. per unit, becoming worth 13s. at the end of ten years. Average yield over the full period, £2 13s. 2d. per cent (tax free).

Maximum holding, 1,000 certificates, in addition to holdings of any previous issues.

Certificates of any issue in joint names must be reckoned in calculating the holdings of each of the joint holders.

NINTH ISSUE. From 1st February, 1951. Issued at 15s. per unit, becoming worth 20s. 3d. at the end of ten years. Average yield over the full period £3 0s. 11d. per cent (tax free).

Maximum holding 1,000 certificates in addition to any existing holding of previous units.

CONVERSION SCHEMES. In June, 1926, holders of First Issue Certificates could convert them at their encashable value into—

(*a*) 4% National Savings Bonds at par; or
(*b*) 4½% Conversion Loan 1940–4, at market price.

From October, 1927, until 31st March, 1928, holders of First Issue Certificates had the option to convert them, at their encashable value, into—

(*a*) 4% National Savings Bonds at par; or
(*b*) 4½% Conversion Loan 1940–4 at 10s. per cent below the market price.

Between 18th January and 30th April, 1932, holders could convert First Issue Certificates into—

(*a*) National Savings Certificates (Conversion Issue) at 16s. per unit. These have a currency of ten years. Interest accumulates at rate of 2d. per unit for each completed period of three months until the end of the sixth year and thereafter at the rate of 3d. for each completed period of three months.

Average yield over first six years	£3 15s. 9d.%
" " " whole period of ten years	£4 2s. 9d.% (tax free)

(*b*) 4½% Conversion Loan 1940–4 at ½% below market price; or

(*c*) 4% National Savings Bonds, at par.

Re-investment. Certificates may be encashed and the proceeds—

(*a*) re-invested in Certificates of current issue (subject to the maximum referred to above);
(*b*) deposited in the Post Office Savings Bank; or
(*c*) applied to the purchase of certain Government Securities, particulars of which will be furnished on application.

Interest accruing on Savings Certificates is free from Income Tax and need not be included in any Income Tax Return. Interest is not payable apart from the purchase price.

The Postmaster-General will not recognise any lien or charge over Savings Certificates and hence they cannot form an effective security for an advance.* Occasionally they are lodged under a memorandum of deposit with a signed repayment form. Inasmuch, however, as a registered holder can obtain duplicate certificates on payment of one shilling, they are best regarded as evidence of means and not as any sort of security.

Savings Certificates can be the subject of a good *donatio mortis causa.* (*Darlow* v. *Sparks* (1938), 54 T.L.R. 627.

NEGLIGENCE. "Legal negligence or actionable negligence depends upon these propositions: firstly, that the person who is accused of negligence owes a duty to the person suing him, a legal duty; secondly, that by some act or omission he has made a breach of that duty; and thirdly, that damage results to the person to whom the duty is owed."—Mr. Bernard Campion, K.C. (*Journal of the Institute of Bankers,* vol. 55, p. 126.)

A bank may find itself involved in loss as a result of the negligence of its servants in a variety of circumstances. If property is entrusted to the safe custody of a bank and it is damaged or destroyed whilst so held, the bank may be liable in damages for negligence if, being a gratuitous bailee, it has not taken the same care of the customer's property as a reasonably prudent and careful man would have taken, or, being a paid

* Until January, 1950, the Post Office Savings Department did in fact acknowledge and record notice of charge but without any liability for so doing.

bailee, has not adopted all possible precautions and resources for the safe keeping of the customer's property.

Likewise, if such property was fraudulently abstracted or stolen by an employee of the bank or any other person, an action would lie for negligence. Delivery to the wrong person would not be negligence, but wrongful conversion.

If a banker undertakes to advise his customer on investment matters, and it is shown that his advice was given without due care, he may be liable for negligence. A bank will not be liable, however, for lack of care in giving investment advice on the part of a branch manager unless it can be shown that the giving of such advice is part of its ordinary business. (*Banbury* v. *Bank of Montreal*, [1918] A.C. 626.)

Where the answer to a banker's status inquiry led the party for whom the inquiry was made into loss, and such party sued the bank giving the opinion for damages, it was held that there was no duty on the part of that bank towards such party. The giving of an opinion by one banker to another, who passed it on to his customer, did not create a duty binding on the banker giving the information. Hence there could be no negligence towards another bank's customer. (*Batt's Combe Quarry Co.* v. *Barclays Bank* (1932).)

Where a banker pays a cheque on which his customer's signature is forged, he is not liable for negligence but for a breach of his customer's mandate.

The most usual case where a banker is liable on the grounds of negligence is in the collection of cheques. Whenever he collects a cheque to which his customer has no title or a defective title he converts it; whether he is liable in damages for such conversion depends on whether he is protected by Section 82 of the Bills of Exchange Act, 1882. To qualify for such protection the burden of proof is on him to show that he acted without negligence. This assumes that he is under a duty towards the true owner of the cheque—an outside party. The duty is not a contractual one, but a statutory one, laid upon him by Section 82. "There is no duty at common law on the collecting banker to exercise care; the duty is entirely created by the Act." (*Lloyds Bank* v. *Chartered Bank of India*, [1929] 1 K.B. 40.) The Act lays down no definition of negligence. In *Wallbank & Co. Ltd.* v. *Westminster Bank Ltd.* (1924) (unreported), the term was defined as follows: "Negligence is the doing of that which a reasonable man under all the circumstances of the particular case in which he is acting would not do, or the failure to do something which a reasonable man under those circumstances would do." In *Commissioners of Taxation* v. *English, Scottish, & Australian Bank, Ltd.*, [1920] A.C. 683, it was said, "the test of negligence is whether the transaction of paying in any given cheque coupled with antecedent and present circumstances was so out of the ordinary course of business that it ought to have aroused doubts in the banker's mind and caused him to make inquiry." It may fairly be said that absence of inquiry where reasonably called for or acceptance of an explanation not reasonably satisfactory is the crux of negligence. Whether an answer to an inquiry can be considered satisfactory may depend on the customer's previous banking history. Where a customer had thirty-five cheques returned for want of funds during six months, it was held that his explanation of his action in paying in a third-party cheque was not sufficient and further inquiries were called for. (*Motor Traders' Guarantee Corporation* v. *Midland Bank, Ltd., The Times*, 16th October, 1937.)

A banker has been held not to have acted without negligence in the following circumstances: where he collected a cheque bearing an irregular indorsement (*Bavin* v. *London & South Western Bank*, [1900] 1 Q.B. 270): where cheques were accepted for collection for a new customer whose *bona fides* were not proved or where references were not vouched for (*Guardians of St. John's* v. *Barclays Bank* (1923), 39 T.L.R. 229; *Ladbroke* v. *Todd* (1914), 30 T.L.R. 433): where an official of a company or an employee or agent was permitted to place to his credit a cheque drawn by or payable to his company, employer, etc. (*A. L. Underwood Ltd.* v. *Barclays Bank*, [1924] 1 K.B. 775; *Souchette, Ltd.* v. *London County & Westminster Bank* (1920), 36 T.L.R. 195; *Savory & Co.* v. *Lloyds Bank*, [1932] 2 K.B. 122): where cheques were collected for the account of the wife of an employee, drawn to third parties by the latter's principals (*Savory's Case*): where cheques were collected of a size incompatible with the customer's position in life (*Lloyds Bank* v. *Chartered Bank of India*, [1929] 1 K.B. 40): where cheques crossed "a/c payee" were collected for an account of a third party (*House Property Co. of London* v. *London County & Westminster Bank* (1915), 31 T.L.R. 479). A series of transactions whereby a banker is "lulled to

sleep" will not excuse negligence nor can the exigencies of business be pleaded in mitigation (*Crumplin* v. *London Joint Stock Bank* (1913), 30 T.L.R. 99.) The contributory negligence of the true owner will not excuse the collecting banker's negligence, for the true owner is under no duty to the banker. (*Morison* v. *London County & Westminster Bank*, [1914] 3 K.B. 356.) Neither will the fact that the cheques are paid in at one branch for the credit of another branch in circumstances where the banker's knowledge of the facts is divided avail the collecting banker. (*Savory's Case.*)

(See COLLECTING BANKER.)

NEGOTIABLE INSTRUMENT. A negotiable instrument is one which conforms to the following three tests—

(1) It must be such and in such a state that the property in it (i.e. the legal ownership) passes by mere delivery or in some cases by indorsement and delivery.

(2) A person taking it in good faith and for value and without notice of defect of title gets an indefeasible title against all the world. Such a person is called a *bona fide* holder for value without notice or, in the case of a bill or a cheque, a holder in due course.

(3) It must contain a right of action in itself and entitle the holder to sue in his own name.

A negotiable instrument is an exception to the general rule of law that *nemo dat quod non habet* ("no one can give what he has not"), for a transferee under the conditions mentioned in (2) can obtain a good title from a thief even against the true owner. To affect a transferee with notice of defect of title there must be something more than negligence, and the doctrine of constructive notice is not applicable to negotiable instruments.

Where a stockbroker pledged clients' bearer bonds to a bank who advanced money against them in good faith and without notice, the bank was held to be entitled to hold them against the true owner. (*London Joint Stock Bank* v. *Simmons*, [1892] A.C. 201.) In the course of the judgment Lord Herschell said—

"It is surely of the very essence of a negotiable instrument that you may treat the person in possession of it as having authority to deal with it, be he agent or otherwise, unless you know to the contrary, and are not compelled, in order to secure a good title to yourself, to inquire into the nature of his title, or the extent of his authority. . . . I should be very sorry to see the doctrine of constructive notice introduced into the law of negotiable instruments. But regard to the facts of which the taker of such instruments had notice is most material in considering whether he took it in good faith. If there is anything wanting which excites the suspicion that there is something wrong in the transaction, the taker of the instrument is not acting in good faith if he shuts his eyes to the facts presented to him and puts the suspicions aside without further inquiry. . . . It is easy enough to make an elaborate presentation after the event of the speculations with which the bank managers might have occupied themselves in reference to the capacity in which the broker who offered the bonds as security for an advance held them. I think, however, they were not bound to occupy their minds with any such speculations. I apprehend that when a person whose honesty there is no reason to doubt offers negotiable securities to a banker or any other person, the only consideration likely to engage his attention is, whether the security is sufficient to justify the advance required. And I do not think the law lays upon him the obligation of making any inquiry into the title of the person whom he finds in possession of them: of course, if there is anything to arouse suspicion, to lead to a doubt whether the person purporting to transfer them is justified in entering into the contemplated transaction, the case would be different, the existence of such suspicion or doubt would be inconsistent with good faith. And if no inquiry were made, or if on inquiry the doubt were not removed and the suspicion dissipated, I should have no hesitation in holding that good faith was wanting in a person thus acting."

The following are negotiable instruments: bank notes, bearer bonds, Treasury bills, share warrants and share certificates to bearer, debentures payable to bearer, bills of exchange, promissory notes, and cheques. The list of negotiable instruments is not closed and the Courts will give judicial recognition to the custom of merchants to treat mercantile instruments as negotiable. A foreign instrument that is negotiable in the country of its origin is not necessarily negotiable in this country. Share certificates in the American form, where a form of transfer is placed on the back, are treated as bearer instruments when duly indorsed by the registered holder, but they are not negotiable, for a transferee is unable to sue in

his own name until he presents the instrument for registration. Bills of exchange (including cheques) are the most common example of negotiable instruments. They can lose their negotiable quality, however. A bill expressed to be payable to a particular person "only" or "not transferable," is neither transferable nor negotiable. (Bills of Exchange Act, 1882, Section 8.) A bill that has been restrictively indorsed can only be negotiated subject to defects of title, i.e. it is not negotiable. (Sections 35 and 36.) An overdue bill can only be negotiated subject to any defect of title affecting it at maturity and thenceforward no person who takes it can acquire or give a better title than that which the person from whom he took it had; in other words, it is not negotiable. (Section 36 (2).) Where a bill was payable to the order of a specified payee "only" and further bore on it the words "not negotiable," it was held to be limited as to its effect as between the drawer and the acceptor, and to be neither negotiable nor transferable. There cannot be a holder, let alone a holder in due course capable of suing on it. (*Hibernian Bank, Ltd.* v. *Gysin & Hanson*, [1939] 1 All E.R. 165.) Where a crossed cheque bears on it the words "not negotiable," he shall not have and shall not be capable of giving a better title to a cheque than that which the person from whom he took it had. Such a cheque has lost its negotiability. (Section 81.)

"Negotiability by estoppel" is a phrase mistakenly used for title by estoppel and in *Easton* v. *London Joint Stock Bank* (1887), 34 Ch.D. 95, it was made plain that no sort of negotiability can be infused into non-negotiable instruments, but that the estoppel is a personal matter of conduct, holding out, etc., wherein the instrument is evidence.

(See also NOT NEGOTIABLE CROSSING; OVERDUE CHEQUES, QUASI-NEGOTIABLE INSTRUMENTS.)

NEGOTIATED BACK. (See Section 37, Bills of Exchange Act, 1882, under NEGOTIATION OF BILLS OF EXCHANGE.)

NEGOTIATION OF BILL OF EXCHANGE. The Bills of Exchange Act, 1882, Section 8 (2), provides that—

"A negotiable bill may be payable either to order or to bearer."

The negotiation of a bill is defined in Section 31—

"(1) A bill is negotiated when it is transferred from one person to another in such a manner as to constitute the transferee the holder of the bill.

"(2) A bill payable to bearer is negotiated by delivery.

"(3) A bill payable to order is negotiated by the indorsement of the holder completed by delivery.

"(4) Where the holder of a bill payable to his order transfers it for value without indorsing it, the transfer gives the transferee such title as the transferor had in the bill, and the transferee in addition acquires the right to have the indorsement of the transferor.

"(5) Where any person is under obligation to indorse a bill in a representative capacity, he may indorse the bill in such terms as to negative personal liability."

By Section 36—

"(1) Where a bill is negotiable in its origin it continues to be negotiable until it has been (*a*) restrictively indorsed, or (*b*) discharged by payment or otherwise.

"(2) Where an overdue bill is negotiated, it can only be negotiated subject to any defect of title affecting it at its maturity, and thenceforward no person who takes it can acquire or give a better title than that which the person from whom he took it had.

"(3) A bill payable on demand is deemed to be overdue within the meaning, and for the purposes, of this Section, when it appears on the face of it to have been in circulation for an unreasonable length of time. What is an unreasonable length of time for this purpose is a question of fact.

"(4) Except where an indorsement bears date after the maturity of the bill, every negotiation is *prima facie* deemed to have been effected before the bill was overdue.

"(5) Where a bill which is not overdue has been dishonoured, any person who takes it with notice of the dishonour takes it subject to any defect of title attaching thereto at the time of dishonour, but nothing in this subsection shall affect the rights of a holder in due course."

With regard to the words "unreasonable length of time" in the above Section, see PRESENTMENT FOR PAYMENT.

A bill may, in the ordinary course of business, be negotiated back to a party already liable thereon. By Section 37—

"Where a bill is negotiated back to the drawer, or to a prior indorser or to the acceptor, such party may, subject to the provisions of this Act, re-issue and further negotiate the bill, but he is not entitled to enforce payment of the bill against any intervening party to whom he was previously liable."

Where a bill has been transferred by indorsement to, say, four different persons and the fourth indorser indorses it back to the first, indorser number one cannot enforce payment against the second, third, or fourth indorsers, because each of those three indorsers has a claim against him as the first indorser. But if the first indorser negatived his liability when indorsing the bill, by the addition of the words "without recourse" to his signature, he can enforce payment, when the bill is indorsed back to him, against the said second, third, or fourth indorsers because they have, in that case, no claim against him.

By Section 8 (1): "When a bill contains words prohibiting transfer, or indicating an intention that it should not be transferable, it is valid as between the parties thereto, but is not negotiable." (See BILL OF EXCHANGE, DELIVERY OF BILL, INDORSEMENT, TRANSFEROR BY DELIVERY.)

NET, OR NETT, PROFIT. The profit which remains after the deduction of all expenses and any losses which may have been incurred.

NET, OR NETT, RENTAL. The rent of a property after deduction of all taxes, repairs, and other outgoings. (See VALUATION.)

NEXT FRIEND. (See under INFANTS.)

NEXT-OF-KIN. (See INTESTACY.)

NIGHT SAFES. In order that customers may deposit cash or cheques after a bank has closed for the day or for the week-end, night safes were introduced in 1928. The entrance to these safes is in the outside wall of the bank, the opening being fitted with a locked cover to which customers who wish to avail themselves of the safe are supplied with a key. The cash and cheques are placed in a locked wallet, which is put into the opening, and a chute conveys the wallet inside the bank. The customer calls at the bank in business hours and is given the wallet, which he unlocks, and he pays the contents into his account.

"NO ACCOUNT." These words are written upon a cheque which is returned by the drawee banker, because the drawer has no account with the banker.

A person is liable to be charged with false pretences if he issues a cheque drawn upon a banker where he has no account.

"NO ADVICE" (OR "NO ORDERS"). The answer written on a bill domiciled with a banker where no advice to pay has been received from the acceptor. The payment of bills is not an integral part of the banker's contract with his customer, and hence there is a custom in the country for customers to advise their bankers of bills domiciled with the latter. Nevertheless it is considered that the acceptance of a bill payable at a bank is implied authority to the banker to pay it at maturity. In London bills are paid without advice in the absence of arrangement to the contrary. It is the custom for bills domiciled at London banks by foreign customers and for cheques drawn by foreign customers on London to be advised for payment.

The Committee of London Clearing Bankers resolved, in October, 1928, that no return can be received without an answer in writing on the return why payment is refused, such answer to be written in words and not indicated by initials.

"NO FUNDS." These words, which are sometimes placed upon a cheque by a banker, mean that the drawer has no funds in his account with which to pay the cheque.

"NO ORDERS." (See "NO ADVICE.")

NO PAR VALUE. In 1920, American corporations began to issue shares with no par value. One object of this procedure was to enable business concerns to give a stated value for their common shares more in keeping with the real value of their assets than the nominal amount in which they were previously expressed. It also enabled corporations to issue new shares at any time at any price. The system has been of considerable advantage to issuing houses in the matter of new finance. For example, a new corporation would issue debentures to which were attached a certain number of shares of no par value. These shares were an incentive to subscribe, for if the new business prospered the debentures would be repaid and the equity of the business would rest in the holders of the shares.

NOMINAL ACCOUNTS. Another name for impersonal accounts (*q.v.*).

NOMINAL CAPITAL. The amount authorised as the capital in the memorandum of association of a joint stock company, called

also the "authorised" or "registered" capital. (See CAPITAL.)

NOMINAL CONSIDERATION. Where shares are transferred for other than a monetary consideration, a nominal consideration, usually 5s., is inserted in the instrument of transfer. Such instruments attract a fixed stamp duty of 10s. where the transfer occurs in the following circumstances—

On the appointment of a new trustee of a pre-existing trust, or on the retirement of a trustee.

To a mere nominee of the transferor where no beneficial interest in the property passes. The circumstances giving rise to the transfer should be stated.

As security for a loan; or a re-transfer to the original transferor on repayment of a loan. (A transfer from a vendor made by direction of a purchaser to a person who is to hold the shares as security for a loan made to the purchaser, is liable to *ad valorem* duty.)

To a residuary legatee; stock, etc., which forms part of the residue divisible under a will.

To a beneficiary under a will who is entitled to the shares as a specific legacy.

To transfer to the party or parties entitled, shares, etc., forming part of the property of a person dying intestate.

To a beneficiary under a settlement on distribution of the trust funds, of shares, etc., forming the share, or part of the share, of those funds to which the beneficiary is entitled in accordance with the terms of the settlement.

In order to get a transfer stamped with the fixed duty of 10s., the transfer must be produced to the Marking Officer at a Stamp Office with a Certificate on Inland Revenue Form 19 or on the back of the transfer, stating the circumstances under which the transfer is made. The certificate must be signed by both transferor and transferee or a member of a Stock Exchange or a solicitor acting for one of the parties or an accredited representative of a bank. Where a bank or its nominee is a party to the transfer, the certificate may be to the effect that "the transfer is excepted from the provisions of Section 74, Finance (1909–10) Act, 1910."

The certificate signed by the Marking Officer will be accepted by a company registrar as authority to register the transfer with the fixed duty of 10s.

Ad valorem duty is payable whatever be the consideration shown on the transfer where the transfer is made in satisfaction of a pecuniary bequest, or in liquidation of a debt or in exchange for other securities or by way of gift.

NOMINAL VALUE. The value which appears upon the face of a certificate or bond. The market value is what the security will sell for, and may be higher or lower than the nominal or face value.

NOMINATIONS. (See WILL.)

NOMINATIVE BOND. In connection with the Government issue of National War Bonds there were issued in 1918 £5 Nominative Bonds, repayable in 1927. This form of bond was designed in order to provide a security which could be obtained without formalities in exchange for cash over the counter. The bond was provided with a counterfoil containing a request for registration, which had to be filled up and forwarded to the Controller of the Post Office Savings Bank. The purchaser's name had also to be inserted in the bond.

NOMINEE COMPANIES. Instead of placing stocks and shares in the names of personal nominees for security and other purposes, it is the practice of banks to incorporate nominee companies whose sole function is to hold stocks and shares transferred to them by the owners for the purpose of forming security for advances or for purposes of convenience, e.g. to avoid the execution of transfers when the customer is resident abroad. Nominee companies having perpetual succession avoid the difficulty and trouble arising on the retirement or death of personal nominees. Dividends and interest are credited in due course by the nominee company to the customer to whom are passed on notices of meetings and other communications relating to the stocks or shares. It is advisable to take an indemnity from the depositors of shares who are domiciled abroad against any losses arising from notices, etc., not reaching them.

Where instructions are received from a transferor to hold shares already in the name of the nominee company to the order of a third party, the Inland Revenue consider that stamp duty is exigible, but legal opinion is to the opposite effect. Where shares are held on account of joint depositors, who hold as joint tenants, the nominee company is jointly responsible with the survivor(s) for payment of death duty; if the parties are tenants in common, however, the liability rests on the executors of the deceased. A bank must make a return to the Inland Revenue of holdings of 3½ per

cent War Loan and of other British Government Stocks on the Post Office Register held in the names of any of its nominees on which untaxed interest of £15 or more is paid. This is a result of the decision in *Attorney-General* v. *National Provincial Bank* (1928).

NON-BUSINESS DAYS. For the purposes of the Bills of Exchange Act, 1882, non-business days are: Sunday, Good Friday, Christmas Day, a bank holiday under the Bank Holidays Act, 1871, or Acts amending it, a day appointed by Royal proclamation as a public fast or thanksgiving day. Any other day is a business day. (See Section 92 under BILLS OF EXCHANGE ACT, 1882.)

NON-CUMULATIVE DIVIDEND. Where the dividend upon preference shares is payable only out of the profits of each separate year, it is a non-cumulative dividend. On the other hand, if the profits of succeeding years may be employed to pay up all dividends which have accrued on the preference shares, before the ordinary shares get anything, the dividend is said to be cumulative. (See PREFERENCE SHARES.)

NON-NEGOTIABLE INSTRUMENTS. (See NEGOTIABLE INSTRUMENT.)

NON-TRADING PARTNERSHIP. There is no statutory definition of a trading or non-trading partnership. A trading business has been defined as one which depends on the buying and selling of goods. (*Higgins* v. *Beauchamp*, [1914] 3 K.B. 1192.) Judged by this criterion, professional partnerships such as doctors, solicitors, and accountants are non-trading partnerships. Partnerships of farmers and innkeepers have been held to be non-trading partnerships.

In a non-trading firm no implied authority exists to pledge or sell assets of the firm or to borrow or to contract debts or engage in bill transactions. Such authority must be expressly given. A partner in a non-trading firm can bind the firm, however, by drawing cheques. (*Backhouse* v. *Charlton* (1878), 8 Ch.D. 444.)

The mandate usually taken on the opening of a partnership account will expressly provide for such matters as borrowing, etc. (See PARTNERSHIPS.)

NORTHERN IRELAND LAND ACT. (See IRISH LAND LAWS.)

NOSTRO ACCOUNT. London bankers keep accounts in currency with agents in many foreign centres. In any communication with the agents regarding the account, the London bank would refer to it as *nostro* account (meaning, our account with you), and the agents, in any communication with the London bank, would refer to it as *vostro* account (meaning, your account with us). The London bank keeps records in its own books of its foreign *nostro* accounts, the items and balances being agreed from time to time.

Foreign agents also keep accounts in sterling with London banks. The agents would refer to the account, in any communication with the London bank, as *nostro* account, whilst the London bank would refer to it as *vostro* account. These accounts are similarly agreed from time to time.

The account which a London bank may keep with a foreign agent is, of course, quite distinct from the account which a foreign agent may keep with the London bank.

Loro account means their account. The expression is used when dealing with third parties. If two foreign banks have sterling accounts at the same London bank, one of them might, for example, instruct the London bank to transfer a sum from its *nostro* account to the *loro* account of the other bank.

"NOT NEGOTIABLE" CROSSING. "Where a person takes a crossed cheque which bears on it the words 'not negotiable,' he shall not have and shall not be capable of giving a better title to the cheque than that which the person from whom he took it had." (Bills of Exchange Act, 1882, Section 81.) The words need not be written between the lines of a general crossing but must be in some proximity to the crossing. The words on an open cheque have no significance but such a cheque presented over the counter by a non-banker would be referred back as an ambiguous document. The phrase in no way limits the transferability of a cheque; it merely removes it from the category of negotiable instruments so that any transferee takes it subject to any previous defects of title; it is a warning that the drawer and other prior parties may set up against a holder false pretences or theft at an earlier stage in the cheque's history. There cannot be a holder in due course of a cheque crossed "not negotiable."

It is expedient to advise customers when drawing cheques to cross them "not negotiable"; otherwise, although they may countermand payment, they will have nevertheless to pay a holder in due course.

The words do not affect a collecting banker in the absence of other circumstances; neither do they concern a paying banker,

who may safely pay a cheque so crossed bearing a series of indorsements. A banker exchanging a cheque so crossed drawn on another bank is in precisely the same position as any other transferee of such a cheque and cannot set up as a holder in due course.

A conditional form of cheque (i.e. one with a form of receipt, the completion of which is a condition of payment) is not negotiable and Section 17 of the Revenue Act, 1882, expressly provides that such an instrument shall not be so regarded.

"NOT PROVIDED FOR." An answer sometimes written by a banker on a cheque which is being returned unpaid for the reason that the drawer has failed to provide funds to meet it.

Since October, 1928, the Bankers' Clearing House will not receive a return unless the answer is written in words without abbreviation. (See ANSWERS.)

"NOT SATURDAYS." An answer which may be written upon a returned bill, by the walks department of a bank's head office, in the case of Jewish firms that do not open for business on Saturdays.

"NOT SUFFICIENT." When the funds in a customer's account are insufficient to meet a cheque which has been presented to the banker through the clearing or otherwise, the cheque, on being returned unpaid, is sometimes marked with the words "not sufficient," or "not sufficient funds." The answer " Refer to drawer" is preferable.

The deficiency must, however, on no account be stated.

Since October, 1928, the Bankers' Clearing House will not receive a return unless the answer is written in words without abbreviation. (See ANSWERS.)

NOTARIAL ACT. An act which is required by law to be done by a notary.

It is exempt from stamp duty by the Finance Act, 1949.

And see PROTEST, SEISIN, and Section 90, under PROTEST.

NOTARY PUBLIC. Originally a notary was a person who only took notes or minutes and made drafts of writings. He was called by the Romans *notarius*.

The duty of a notary, so far as a banker is concerned, is to present dishonoured bills and "note" them for non-acceptance or non-payment, and, if necessary, afterwards to extend the noting into a protest. (See NOTING.)

NOTE ISSUE. Certain banks have the privilege of issuing their own notes, but the amount of the note issue of an English bank was strictly limited to the amount certified by the Commissioners of Inland Revenue as being the average amount of the notes of the bank in circulation during a period of twelve weeks preceding 27th April, 1844. The Bank Charter Act of 1844 regulated the note issues in England.

Through amalgamations, the last note issue of a joint stock bank in England disappeared in 1919, and of a private bank in 1921. (See BANK OF ISSUE.)

The Bank of England is now the sole bank of issue in England. In 1928, the currency note issue of the Treasury was transferred to the Bank of England and the Bank was empowered to issue notes for £1 and for 10s. (See CURRENCY AND BANK NOTES ACT, 1928, FIDUCIARY ISSUE.)

The issue of bank notes in Scotland is regulated by 8 & 9 Vict. c. 38, and in Northern Ireland by 8 & 9 Vict. c. 37. Both Acts were passed in 1845, and the regulations are somewhat similar to the Bank Charter Act, 1844. (See BANK OF ISSUE.) Notes in Scotland and Northern Ireland may be for £1 and upwards.

Banks in Scotland and Northern Ireland may have an office in London without losing the right to issue own notes, though the right cannot be exercised by the London offices.

The "note issue" of a bank means the total amount of own notes which the bank is legally authorised to issue. The expression "note circulation" is generally used to mean the total of the bank's own notes which are actually in the hands of the public.

NOTE OF HAND. A name occasionally given to a promissory note (*q.v.*).

NOTE REGISTER. (See BANK NOTE REGISTER.)

NOTICE IN LIEU OF DISTRINGAS. Rule 4 of Order 46 of the Supreme Court provides that a party claiming to be interested in shares or stock registered in the name of another may file a notice to that effect together with an affidavit in the Central Office of the Supreme Court or at a District Registry. An office copy of the affidavit and a sealed duplicate of the notice will be supplied to the applicant for service on the registered office of the company concerned. The company will then be under the necessity of giving the server of the notice eight clear days' warning of its intention to pass a transfer of the shares. This will give the interested party time to protect his interest by applying for an injunction. The notice in lieu of distringas can also be

drawn to restrain the payment of dividends without notice to the server. A fee of 10s. is chargeable for registering a notice.

This method of safeguarding interests in stocks and shares is rarely used by English banks in the case of advances against untransferred securities. It is used in the case of a mortgage of an equitable interest in an estate comprising stocks and shares, where, in addition to serving the trustees with notice of the mortgage, a distringas notice is served on the companies concerned. (See DISTRINGAS.)

NOTICE OF DISHONOUR. Where a bill has been dishonoured by non-acceptance or non-payment, notice of dishonour must be given to the drawer, and each indorser and ordinarily any such party not receiving such a notice is discharged. (Section 48, Bills of Exchange Act, 1882.) A collecting banker receiving back an unpaid cheque, forwarded for collection on behalf of his customer, must give such customer notice of dishonour. This is usually done by returning the article to him with a covering memorandum. If, however, the banker re-presents the cheque (as, for example, where he confirms an irregular indorsement), he must nevertheless send his customer notice of dishonour, otherwise in the event of the second dishonour of the cheque, the customer might refuse to be debited therewith on the grounds that not having received notice of dishonour in the first instance, he assumed the cheque was paid. For rules as to giving notice and as to when notice is excused, see under DISHONOUR OF BILL OF EXCHANGE.

NOTICE OF LIEN. A notice served on the secretary or registrar of a company, where stock or shares are held as security untransferred, advising him of the charge given by the borrower. It is usually served in duplicate with a request for the duplicate to be returned receipted as an acknowledgment. Some statutory companies require a registration fee of 2s. 6d.

Usually such a notice is ignored or a disavowal of the notice is sent by the company drawing attention to Section 117 of the Companies Act, 1948, whereby a company is forbidden to take notice of any trust, express, implied, or constructive. It is understood, however, that many companies keep an unofficial register of such notices—useful where a shareholder attempts to obtain a duplicate certificate.

Some companies provide in their articles that they shall have a first and paramount lien on their shares for any moneys owing by a shareholder.

Notice of lien is sent to a company, not in its function as a registering body but in its trading capacity, whereby the shareholder may from time to time become indebted to it. The object of the notice is to warn the company against allowing its shareholder to become indebted to it subsequent to the notice. Thus a notice of lien given by a bank as mortgagee of a company's shares effectively warns the company that it cannot enforce its lien over the shares in question in respect of after-incurred debts of the particular shareholder. In the case of *Bradford Banking Co. Ltd.* v. *Henry Briggs Son & Co.* (1886), 12 App. Cas. 29, it was held that the words in the company's articles "first and permanent lien" merely made the company first mortgagee of the shares of any shareholder indebted to it. As first mortgagee the company was at liberty to make further advances to its shareholder until it received notice of second mortgage, after which it could not make further advances to rank in front of the interest of which it had received notice. The notice of lien given by the bank was not notice of a trust, but was an effectual warning that the remanent interest in the shares had been charged to the bank. The Bank of England is prohibited by statute from receiving notice of lien in respect of Government stocks.

A condition of an official quotation on the London Stock Exchange is that stock and fully paid shares shall not be subject to the company's lien, and hence many banks refrain from sending notice of lien in such cases, for there is no risk of the company raising a lien on its shares on account of a debt due to it from the shareholder.

Notice of lien is particularly necessary in the case of private companies where it is not uncommon for members to be indebted to the company. Likewise it is desirable to serve notice when lending against shares of another bank as it is conceivable that the shareholder may also become a borrower from such bank on the strength of his shareholding.

Notice in lieu of distringas (*q.v.*) is a method of giving notice of an interest in stocks or shares which a company or registrar must recognise. A Charging Order (*q.v.*) is another method, but is only available to a judgment creditor. (See under LIEN.)

NOTICE OF SECOND MORTGAGE. Where a second mortgage is taken, notice thereof should be given to the first mortgagee in order to fix the sum for which his mortgage shall be available as security. The first

mortgagee should be asked to acknowledge in writing receipt of the notice, confirming the amount outstanding, and to state if he has received notice of any other mortgages and whether he is bound by the terms of his mortgage to make further advances. If the latter is the case, such further advances will rank in front of the second mortgage. This would be the case where the mortgagee was advancing a stated sum by instalments. Unless his mortgage contains such a covenant, a mortgagee, before making additional advances, must search the Land Charges Register to ascertain if any subsequent mortgages have been registered since he made his original advance.

In the case of a mortgage to secure a current account or other further advances, however, registration of a second mortgage will not affect the original lender with notice unless and until he searches. (Law of Property Act, 1925, Section 94, as amended by the Law of Property (Amendment) Act, 1926.) Receipt of direct notice, however, would affect him.

Registration of a memorial in the Deeds Registries of Yorkshire has the same effect as regards notice as registration on the Land Charges Register, but where a mortgage provides for the making of further advances (as in a bank mortgage) registration of a subsequent mortgage or charge will not jeopardise the priority of any such further advances by the first mortgagee. Direct notice will, of course, affect him. (See YORKSHIRE REGISTRY OF DEEDS.)

In the case of land with a registered title where a charge to secure further advances is registered, the Registrar must advise the first chargee before making any entry on the Register adversely affecting the priority of any further advances.

If a banker receives notice of a second mortgage and does not break the account, the operation of the Rule in *Clayton's Case* will mean that all subsequent credits to the account will go to reduce the advance as at the date of receipt of the notice, whilst all payments out of the account will be in the nature of fresh advances ranking behind the second mortgage. (See *Deeley* v. *Lloyds Bank Ltd.*, [1912] A.C. 756.)

Frequently a banker receives notice of a second mortgage which expressly mentions that it is subject to an advance of a named amount by the banker. A banker will in such a case be safe in lending up to such sum by way of a non-fluctuating loan, but if the advance is by way of overdraft, the notice of second mortgage should specifically state that the banker is free to make advances by way of fluctuating overdraft to an amount not exceeding at any one time the named sum.

Where notice of second mortgage is received in respect of an advance on loan account, the borrower is free to deal with any credit balance on his current account, until such time as the banker calls for repayment of the loan and is thus in a position to appropriate any credit balance towards repayment of the loan.

In the case of a limited company, registration of a charge at Bush House is deemed to be notice to all the world. There is no duty on the part of a second mortgagee to give direct notice of his charge to a first mortgagee, and hence Perry's or Stubb's *Gazette* should be closely searched for notice by way of debenture or otherwise. It is very doubtful if the exception in favour of bankers in Section 94 of the Law of Property Act, 1925, regarding registration at the Land Charges Registry quoted above applies in like manner to registration of a company's charge at Bush House.

Where an account has been broken on receipt of notice of second charge, future interest charges will have priority to the second charge. Such interest should not be merged into the debt outstanding at the time of breaking the account, however, but debited to a suspense account pending provision by the borrower. (See also SECOND MORTGAGE.)

NOTING. Where a bill has been dishonoured by non-acceptance or by non-payment it may be handed by the holder to a notary public to be noted. The notary presents the bill again to the drawee for acceptance, or to the acceptor for payment, or to the bank where accepted payable, and if acceptance or payment is still not obtained the bill is noted.

The noting consists of the notary's initials, the date, the noting charges, and a mark referring to the notary's register, written on the bill itself. The notarial registers bear certain letters upon them and a corresponding letter is put upon the bill as a mark. A ticket or label is also attached to the bill on which is written the answer given to the notary's clerk who makes the notarial presentment, e.g. "no orders," "no advice," "no effects," "office closed." Before sending out the bill, the notary makes a full copy of it in his register and then subsequently adds the answer given, if any. (Brooke's *Notary*,

9th Edition, p. 81.) From these records the notary draws up the protest, if such is required. The fee charged by notaries is 1s. 6d. in the City of London; outside the City according to distance.

In the case of an inland bill, it is not necessary to note or protest any such bill in order to preserve the recourse against the drawer or indorsers. (Section 51 (1), Bills of Exchange Act, 1882.) When an inland bill is noted, it is generally with the idea of getting someone to accept the bill for the honour of one of the parties to it. A banker does not usually note a dishonoured inland bill which he has received for collection, unless instructed to do so by his customer or correspondent. When "N/N" is marked on a bill it signifies "not to be noted."

In the case of a foreign bill, however, which has been dishonoured by non-acceptance or non-payment, it must, in order to charge the drawer and indorsers, be duly protested for non-acceptance or non-payment (Section 51 (2)), unless instructions are received from the remitter of the bill that it is not to be noted or protested. Noting is a preparatory step to the protest. (See PROTEST.) Bills to be noted are, in some country banks, sent to the notary before the close of business, but in London it is the practice of bankers to send them after the close of business, thus giving the acceptor up till that hour the opportunity to meet them. A bill may be noted on the day of its dishonour, and must be noted not later than the next succeeding business day (see BILLS OF EXCHANGE, TIME OF NOTING, ACT, 1917); the protest may be subsequently extended as of the date of the noting. (Section 51 (4).) Delay in noting is excused when the delay is caused by circumstances beyond the control of the holder and not imputable to his default, misconduct, or negligence. (Section 51 (9).)

A holder of a dishonoured bill is entitled to recover the expenses of noting from any party liable on the bill. (See Section 57, under DISHONOUR OF BILL OF EXCHANGE.)

If the services of a notary cannot be obtained at the place where a bill is dishonoured, the Bills of Exchange Act, 1882, provides that any householder or substantial resident of the place may, in the presence of two witnesses, give a certificate attesting the dishonour of the bill, which shall operate as if it were a formal protest of the bill. (See BILL OF EXCHANGE. HOUSEHOLDER'S PROTEST, PROTEST.) —

NOTOUR. In Scotland, a "notour bankrupt" is an expression meaning a bankrupt who is publicly acknowledged to be insolvent.

NOVATION. Novation is the substitution of a new obligation for an old one, or of a new debtor for an old one. "There being a contract in existence, some new contract is substituted for it, either between the same parties (for that might be) or between different parties, the consideration mutually being the discharge of the old contract." (Lord Selborne in *Scarfe* v. *Jardine* (1882), 7 App. Cas. 345.)

Where one bank amalgamates with another, the debtors of the old bank, as well as those who have given security in any form, are required to sign a form of assent agreeing to the transfer of their obligations from the one bank to the other. Until the form of assent is signed, the debt, or security, should not be transferred from the one bank to the other.

Where a creditor of the old bank has received notice of the amalgamation, Mr. Justice Buckley says (in his work on *Company Law*): "Although he do not by an express agreement assent to the novation, yet if he acts upon it, and takes the benefits which he could only be entitled to upon the assumption that he has assented to it, there will be evidence on which the Court may find, and, unless there is something to contradict it, ought to find, that he has agreed to take the liability of the new company in substitution for that of the old one."

In *Bradford Old Bank* v. *Sutcliffe*, [1918] 2 K.B. 833, where it was argued that a surety was discharged by a novation of the debt, by which the liability of the customer to the plaintiffs was discharged and another bank (with whom the plaintiffs had amalgamated) became the creditor. Pickford, L.J., in the Court of Appeal, in the course of his judgment, said there can be no doubt that a novation by which the original debtor is released from his debt discharges the surety, but a transfer of an existing and ascertained debt to another creditor stands on a different footing. In order to discharge the surety, it must effect a material alteration in his position. Here the debt was ascertained as long ago as 1899, and the alleged novation did not take place until 1907, the original debtor still remaining liable for the debt. It has been clearly decided that an assignment of the debt does not discharge the surety. For all purposes, so far as the interests of the surety are concerned, a novation by which the

original creditor releases the debtor has no greater effect than an assignment of the debt with notice to the surety. In either case, the transferee of the debt, whether by novation or assignment, is the person with whom the surety has to deal; and as the liability is already ascertained, it is a matter of no consequence as to whom he has to pay it.

NURSING AN ACCOUNT. An operation which, on the one hand, may result in a banker extricating himself from making a bad debt, but which, on the other hand, may result merely in throwing good money after bad. It is a common saying that the first loss is the least, but as no banker relishes the idea of a bad debt it requires a considerable amount of courage to face a debt which, to all appearances, is lost money. The temptation is very strong "to nurse" the account; that is, to endeavour by gentle treatment in various ways to bring it back again to healthy life, in the hope that the money, or, at any rate, some portion of it, may ultimately be recovered. A banker may try to get a reduction of the debt, by periodical instalments, or to get the customer to dispose of some of the securities, which might not be so advantageously got rid of in the event of the customer's failure. He may also endeavour to bring about a change in the nature of the bills which are offered for discount by gradually getting rid of those of an unsatisfactory nature. A banker may also look to his securities and see what improvement can be effected in them. So long as a banker does any of these things in his efforts to bring the account into a better condition he is not, in an ordinary way, putting himself into any worse position than he was in when he first discovered the unsatisfactory state into which the account had drifted, but when he is tempted to lend more money under the promise of some large reduction in the near future, he embarks upon a rather perilous voyage. The additional loan may, in many cases, be made against a deposit of further security, but, unless the security is of such a nature as to be easily realised, the end of the matter may be worse than at the beginning. The history of many banks which have had to close their doors reveals the same story of some large overdrafts which the banker had been nursing in the fond hope that he might eventually bring matters right.

Whenever the question of nursing an account arises, it is highly necessary that a banker give it most careful consideration especially if further accommodation is required under the promise of a large reduction or the bait of additional doubtful security.

In the words of the late J. W. Gilbart (*History, Principles and Practice of Banking*), "we do not mean to imply that in every case it is inexpedient to 'nurse an account.' This is frequently done with the best results; but the determination to attempt it must be governed by circumstances, and in view of the fact, as experience has proved, that it is always a dangerous movement, and that the chances are always very much against the success of the result."

OFFER FOR SALE. An invitation to the public to buy the shares of a new issue from the Issuing House to whom the issue has been sold outright by the company concerned. The document whereby the invitation is made is deemed to be a prospectus issued by the company, subject to all the requirements of the Companies Act, 1948, for the issue of a prospectus. (Section 45.)

OFFICE COPY. A copy of an instrument such as a will or power of attorney or order in lunacy, certified and stamped by the Government Office concerned. For stamp duty, see COPY.

OFFICIAL LIST. (See STOCK EXCHANGE OFFICIAL LIST.)

OFFICIAL QUOTATION. (See QUOTATION ON LONDON STOCK EXCHANGE.)

OFFICIAL RECEIVER. An official receiver is a person appointed by the Board of Trade to administer the estates of bankrupts. He acts under the directions of the Board of Trade and is also an officer of the Court to which he is attached. There may be more than one official receiver attached to a Court. (Section 70 of the Bankruptcy Act, 1914.)

The duties of an official receiver are set forth in the following Sections of the Bankruptcy Act, 1914—

Status of Official Receiver.

"72. (1) The duties of the official receiver shall have relation both to the conduct of the debtor and to the administration of his estate.

"(2) An official receiver may, for the purpose of affidavits verifying proofs, petitions, or other proceedings under this Act, administer oaths.

"(3) All provisions in this or any other Act referring to the trustee in a bankruptcy shall, unless the context otherwise requires, or the Act otherwise provides, include the official receiver when acting as trustee.

"(4) The trustee shall supply the official receiver with such information, and give him such access to and facilities for inspecting the bankrupt's books and documents, and generally shall give him such aid, as may be requisite for enabling the official receiver to perform his duties under this act.

Duties of Official Receiver as regards the Debtor's Conduct.

"73. As regards the debtor, it shall be the duty of the official receiver—

"(*a*) To investigate the conduct of the debtor and to report to the Court, stating whether there is reason to believe that the debtor has committed any act which constitutes a misdemeanour under this Act, or any enactment repealed by this Act, or which would justify the Court in refusing, suspending, or qualifying an order for his discharge;

"(*b*) To make such other reports concerning the conduct of the debtor as the Board of Trade may direct;

"(*c*) To take such part as may be directed by the Board of Trade in the public examination of the debtor;

"(*d*) To take such part and give such assistance in relation to the prosecution of any fraudulent debtor as the Board of Trade may direct.

Duties of Official Receiver as to Debtor's Estate.

"74. (1) As regards the estate of a debtor it shall be the duty of the official receiver—

"(*a*) Pending the appointment of a trustee, to act as interim receiver of the debtor's estate, and where a special manager is not appointed, as manager thereof:

"(*b*) To authorise the special manager to raise money or make advances for the purposes of the estate in any case where, in the interests of the creditors, it appears necessary so to do:

"(*c*) To summon and preside at the first meeting of creditors:

"(*d*) To issue forms of proxy for use at the meetings of creditors:

"(*e*) To report to the creditors as to any proposal which the debtor may have made with respect to the mode of liquidating his affairs:

"(*f*) To advertise the receiving order, the date of the creditors' first meeting and of the debtor's public examination, and such other matters as it may be necessary to advertise:

"(*g*) To act as trustee during any vacancy in the office of trustee."

(See BANKRUPTCY, COMPANIES.)

OFFICIAL SEAL FOR USE ABROAD. A company may, if authorised by its articles, have for use in any place out of the United Kingdom an official seal, which shall be a facsimile of the common seal, with the addition on its face of the name of the place where it is to be used. (See Section 35 of the Companies Act, 1948, under SEAL.)

OHNE KOSTEN. (German, without expense.) These words added to an indorsement on a bill mean that notarial expenses are not to be incurred.

OLD LADY OF THREADNEEDLE STREET. The term has been applied to the Bank of England and the Directors of the Bank. In Brewer's *Dictionary of Phrase and Fable* it is stated that the Directors "were so called by William Cobbett because, like Mrs. Partington, they tried with their broom to sweep back the Atlantic waves of national progress."

OLD STYLE. A phrase referring to the Julian as opposed to the later Gregorian calendar. In the first Christian calendar—the Julian—all the centennial years were leap years and consequently there gradually arose a difference between the tropical and calendar years. In 1582, Pope Gregory rectified this discrepancy by instituting the Gregorian calendar. This was adopted at once by most Continental states, but Great Britain did not adjust her calendar until 1752.

Russia kept to the old style until 1917, and this meant quoting a dual date on bills, thus March 3/16. There was a lag of thirteen days in the old style (O/S) as from 1900 which meant adding thirteen days to arrive at the date under the new style (N/S). Soviet Russia adopted the new style in 1917 and Greece in 1923.

OMNIUM. (Latin, of all.) A Stock Exchange term denoting the aggregate value of the separate stocks or funds which may form the security for a loan.

"ONE MAN" COMPANY. The term is misleading in that it suggests that a company can be owned by a sole person, whereas there must be a minimum of seven persons for a public company and two for a private company. The term is colloquially used to describe a private company in which one man is the predominant part, the other requisite member being a mere nominee. Care must be used in dealing with such a company that the identity of the company is not merged into that of the virtual proprietor; thus cheques payable to the company must not be accepted for the credit of the private account of the director without a convincing and reasonable explanation. In practice a customer would be requested to pay such a cheque into the company's account and adjust matters by a regular drawing on the company's account.

It is not generally appreciated that in the event of winding-up a liquidator could follow the proceeds of cheques payable to the company which had been wrongly applied to a director's account. (See *A. L. Underwood, Ltd.* v. *Bank of Liverpool & Martins*; *A. L. Underwood, Ltd.* v. *Barclays Bank*, [1924] 1 K.B. 775.)

ONEROUS COVENANTS. (See under LEASEHOLD.)

OPEN CHEQUE. An uncrossed cheque. It can be presented for payment at the counter of the drawee banker, who is protected under certain conditions in the payment thereof against forged indorsements by Section 60 of the Bills of Exchange Act, 1882. An open cheque payable to a limited company can safely be paid without inquiry as to the presenter's authority in the absence of suspicious circumstances, and provided the indorsement, in the case of an order cheque, purports to be correct.

As to suspicious circumstances suggestions were made in *Vagliano* v. *Bank of England*, [1891] A.C. 107, and in *Auchteroni* v. *Midland Bank*, [1928] 2 K.B. 294, to the effect that presentment by a party unlikely to be trusted with an instrument convertible into cash, might put a bank on inquiry. In the latter case concerning the payment of a domiciled bill over the counter to a firm's cashier, it was implied that presentment by an office boy or a tramp might amount to notice of defect of title under Bills of Exchange Act, 1882, Section 59.

A banker collecting an open cheque gets no protection from liability for conversion. (Section 82, Bills of Exchange Act, 1882.)

OPEN CONTRACT. Where a vendor signs a simple agreement to sell a particular property at a certain price, and the purchaser agrees in writing to purchase, it is a binding contract, and either party may compel the other to complete. A contract in this simple form is termed an "open contract," because it leaves open and unsettled the various points which should be settled in a properly drawn formal contract. In a formal contract the particular deed is specified with which the title is to commence, but under an "open contract" there is no such provision, and as a purchaser is entitled, unless there is an

agreement to the contrary, to require the vendor to show good title to the property for thirty years (before 1926, forty years), the vendor may find it difficult and expensive to deduce a thirty years' title. This is only one of the points which may cause trouble through not having a properly drawn contract. (See CONTRACT, ROOT OF TITLE.)

OPEN MARKET POLICY. The purchase or sale of securities in the Stock Exchange or Money Market by the Central Bank to expand or contract the volume of credit. For example, when formerly the Bank of England found it necessary to raise the Bank Rate, this measure would not be effective unless market rates of interest were raised in sympathy; and if the supply of money seeking investment was abundant, market rates might lag behind. In those circumstances the Bank would sell Government securities (including Treasury Bills) in the open market, thereby reducing the supply of funds in the Money Market and forcing up market rates. The reverse process—involving the purchase of securities would be associated with a *reduction* in the Bank Rate. Of recent years this technique has been completely overshadowed by the use of Treasury Bills and Treasury Deposit Receipts, the issues of which have been adjusted in amount to absorb or release sufficient funds to produce the desired conditions in the Money Market.

OPEN POLICY. (See MARINE INSURANCE POLICY.)

OPENING A CROSSING. Where a cheque is crossed and the drawer cancels the crossing by writing upon the cheque "Pay Cash" and adding his signature, the operation is called "opening the crossing."

The effect of "opening" a crossed cheque is that the banker is thereby requested to pay cash over the counter instead of paying the cheque in accordance with the crossing, to another banker if it was crossed generally or to the banker specified in the crossing if it was crossed specially. The Bills of Exchange Act does not make any provision for the cancellation of a crossing, and the use of the words "pay cash" has arisen from custom.

Where the words "pay cash" have been actually written by the drawer upon a crossed cheque payable to order and have been signed by him, and the banker pays the cheque to the payee, the banker does not, apparently, incur any liability. If, however, the signature to an "opening" is forged, the cheque remains a crossed cheque and the banker will incur liability if he cashes such a cheque over the counter to a person not entitled to the money.

When a drawer has issued a crossed cheque he cannot subsequently cancel the crossing to the injury of anyone who took it as a crossed cheque.

Owing to the losses which banks have suffered through the fraudulent "opening" of crossed cheques, the Committee of London Clearing Bankers in November, 1912, passed the following resolution—

> "That no opening of cheques be recognised unless the full signature of the drawer be appended to the alteration, and then only when presented for payment by the drawer or by his known agent."

Adherence to this rule by bankers should provide protection against the risks from frauds of this nature.

OPENING AN ACCOUNT. (See CURRENT ACCOUNT.)

OPERATIVE CLAUSE. (See CONVEYANCE.)

OPINION BOOK. A book for recording opinions given to other banks regarding a customer's status, etc., and answers received to inquiries concerning customers of other banks.

The adoption of loose-leaf systems has meant the displacement of this book by opinion cards, filed in alphabetical order.

OPTIONS. A method of speculation on the Stock Exchange. The speculator pays a certain sum for the right (or option) to buy (or "call," as it is termed) a certain amount of stock at a fixed price within a specified time; or the sum may be paid for the right to sell (or "put" as it is termed) instead of to buy. A right either to buy or sell (called a "put and call") is termed a "double option."

ORDER (CHEQUE OR BILL). The Bills of Exchange Act, 1882, Section 8, provides as follows—

> "(4) A bill is payable to order which is expressed to be so payable, or which is expressed to be payable to a particular person, and does not contain words prohibiting transfer or indicating an intention that it should not be transferable.
>
> "(5) Where a bill, either originally or by indorsement, is expressed to be payable to the order of a specified person, and not to him or his order, it is nevertheless payable to him or his order at his option.

The word bill in these subsections includes a cheque.

A cheque payable to order should be indorsed by the person to whom it is payable. (Section 31 (3).) With regard to the question as to a payee's right to refuse to indorse a cheque when presented by himself for payment, see PAYEE.

The drawer may strike out the word "order" and insert the word "bearer," thus making the cheque payable to "bearer," which alteration must be initialed by him. If there are more drawers than one, each drawer must initial the alteration.

A bearer cheque may be converted into an order cheque by the word "bearer" being crossed out; and this may be done by the payee as well as by the drawer. It is not essential to write the word "order."

Where the payee of an order cheque indorses it merely with his signature, it is an indorsement in blank, and the cheque may be transferred as a cheque payable to bearer. Any subsequent holder, however, may again make the cheque payable to order by indorsing it, e.g. "Pay John Brown or order, T. Jones," or by writing above the last indorser's signature a direction to pay the bill or cheque to or to the order of himself or some other person. (Section 34 (4).)

A cheque drawn "Pay order" is equivalent to "Pay to my order" and requires the drawer's indorsement. (*Chamberlain* v. *Young*, [1893] 2 Q.B. 206.)

A cheque drawn "Pay or order" is an incomplete document and should not be paid as no payee is specified.

An instrument payable to an impersonal payee such as "Cash," "Wages," "House," is not payable to a specified person or to bearer and is not a cheque as it does not satisfy Section 7, Bills of Exchange Act, 1882. It is an order to pay money to bearer and whether a banker gets a good discharge in paying may depend on whether the money represented by the instrument reaches the right person. (*North and South Insurance Corporation, Ltd.* v. *National Provincial Bank, Ltd., The Times*, 7th November 1935.) (See BILL OF EXCHANGE, CHEQUE, INDORSEMENT.)

ORDERS. For the stamp duty on orders for payment of money, see BANKER'S ORDER, BILL OF EXCHANGE, CASH ORDER.

"ORDERS NOT TO PAY." (See PAYMENT STOPPED.)

ORDINARY SHARES. The shares into which the capital of a company is divided, as distinguished from preference, which rank in front of the ordinary, and deferred, which rank after. They may be for different amounts, for example, 1s., 5s., 10s., £1, £5, £10, £100 each, and may be either fully paid up or only partly paid. In some companies the ordinary shares consist of two kinds, preferred ordinary and deferrred ordinary.

If a company limited by shares is authorised by its articles, it may convert its paid-up shares into stock. The company cannot issue original stock. It must first issue shares and then, when fully paid, convert them into stock.

OUT CLEARING. When a bank makes an exchange of cheques with another bank the cheques which are given out constitute the "Out" clearing, and the cheques which are received form the "In" clearing. (See CLEARING HOUSE.)

OUT OF DATE. (See STALE CHEQUE.)

OUTSIDE BROKER. A broker who is not a member of the Stock Exchange.

OVER-CAPITALISED. When the capital of a company is too large for the earning capacity, the company is said to be over-capitalised.

OVERDRAFT. (See ADVANCES.)

OVERDUE BILL. A bill of exchange is overdue which has not been paid at maturity. A bill payable on demand is deemed to be overdue within the meaning, and for the purposes of Section 36 of the Bills of Exchange Act, 1882, when it appears on the face of it to have been in circulation for an unreasonable length of time. (See NEGOTIATION OF BILL OF EXCHANGE, PRESENTMENT FOR PAYMENT.) Where an overdue bill is negotiated, it can only be negotiated subject to any defect of title affecting it at its maturity, and thenceforward no person who takes it can acquire or give a better title than that which the person from whom he took it had, i.e. it is not negotiable. (Section 36 (2).)

Except where an indorsement is dated subsequent to the date of maturity of a bill, every negotiation is *prima facie* deemed to have been effected before the bill was overdue. (Section 36 (4).)

If an overdue bill is presented to the bank where it is domiciled, it is advisable, in such a case, to obtain a cheque from the acceptor or a written authority to pay it. (See BILL OF EXCHANGE.)

Where a discounted bill is dishonoured, the banker who receives it back unpaid will debit it to his customer's account and send him notice of dishonour, together with the bill. If, however, the state of the customer's account does not permit of the debit, the bill is debited to Overdue Bills

or Past Due Bills Account. (See BILL OF EXCHANGE. DISHONOUR OF BILL OF EXCHANGE.)

OVERDUE BILLS BOOK. Bills which have been dishonoured and which are not debited to the discounter's account, are passed into overdue bills account, and full particulars of them are entered in the overdue bills book, along with a note of charges incurred, interest, payments on account, and other information.

OVERDUE CHEQUE. A cheque, being a bill of exchange payable on demand, is overdue *for the purpose of negotiation* when it has been in circulation an unreasonable length of time. (Section 36 (3), Bills of Exchange Act, 1882.) By s.s. (2) an overdue cheque can only be negotiated subject to any defect of title and is thus not a negotiable instrument. Any person taking such a cheque is, therefore, in the same position as if the cheque had been crossed "not negotiable." What is an unreasonable length of time is a question of fact. In a Cardiff County Court case reported in *Legal Decisions Affecting Bankers*, Volume III, p. 226, it was held that a cheque dated twelve days previously was overdue when negotiated by a thief. In an earlier case *London & County Banking Company* v. *Groome* (1881), 8 Q.B.D. 288, it was held that a period of eight days between the date of a cheque and its negotiation to a bank was a circumstance to be taken into account when considering if the transaction should have aroused suspicion. Sir John Paget considers that in the absence of special circumstances, ten days or so would probably be held to be the limit of time before a cheque becomes overdue. It must be remembered, however, that it is a question of fact in each case, e.g. a cheque coming from abroad might conceivably not be overdue for considerably longer than ten days after issue.

The foregoing has nothing to do with the practice of paying bankers in returning as stale or out of date, cheques drawn six months or twelve months previously. (See STALE CHEQUE.)

Nor does the foregoing mean that the drawer of a cheque is free from liability to a *bona fide* holder if the cheque is not presented within a reasonable time; his liability is governed by the Limitation Act, 1939, whereby he is liable on the instrument for six years from its issue, except where the cheque is not presented within a reasonable time and the drawee bank fails before presentation. In such a case, if the drawer has lost money by such failure to present he is discharged to the extent of such loss. (Section 74 (1), Bills of Exchange Act, 1882.) (See PRESENTMENT FOR PAYMENT, LIMITATION ACT, 1939.)

OVERRIDING INTERESTS. Interests in land which are not disclosed in the documents of title; an intending purchaser will not find them in an abstract of title and they are generally dealt with in the requisitions on title (*q.v.*). Overriding interests comprise easements such as rights of way, light, drainage, etc.—these may be ascertained by inspection of the land itself or by searching the Land Charges Registry, where they would be registered as a Class D iii charge. Then there are short leases which can be ascertained by inquiry of the occupier. There are also certain statutory interests arising under Acts of Parliament —land tax, redemption annuities, and restrictions arising from the various Building Acts and Public Health Acts. Local land charges (*q.v.*) are also overriding interests. These statutory interests can be ascertained from inquiry of the respective authorities who administer the Acts under which they are created. Overriding interests do not appear on the Register in the case of registered titles, and the position is the same as in the case of unregistered land.

OVERSEERS. By the Rating and Valuation Act, 1925, overseers of the poor shall cease to be appointed after 1st April, 1927, and all their powers and duties in relation to the making, levying, and collection of rates, shall be exercised from that date by the councils of county boroughs and the councils of urban and rural districts, who are called the "rating authorities." (See PRECEPT.)

Overseers came into being under the Poor Law Act passed in the last year of Elizabeth's reign. Their existence lasted 326 years.

PAID CHEQUES. (See CANCELLED CHEQUES AND BILLS.)

PAID-UP CAPITAL. That part of the subscribed or issued capital of a company which has been paid, the other part being termed the "uncalled" capital. The capital is fully paid if there are no further calls to be made; that is, no "uncalled" capital, and no calls in arrears. (See CAPITAL.)

PAID-UP POLICY. A life policy is said to be paid-up when there are no further premiums payable. (See LIFE POLICY.)

PAID-UP SHARES. Shares are "paid-up" when there is nothfng further to be paid thereon. If calls are still to be made, the shares are only "partly paid."

PANICS. In 1825 occurred what is known as "The Panic," stated to be due to speculation in foreign mines; in 1836 a panic took place which has been ascribed to the excessive issue of notes by country banks; in 1839 another panic arrived, for which the country note circulation was again considered to be responsible; in 1847 a crisis occurred, the result mainly of excessive railway speculations. The Bank Charter Act of 1844 was suspended and the Bank was authorised by the Government to issue notes at discretion; the next crisis was in 1857, and again the Bank Act was suspended; in 1866, when another crisis arrived, the Bank Act was once more suspended. During this panic the firm of Overend, Gurney & Co. failed with liabilities of over £10,000,000. On each occasion when the Bank Act was suspended the panic was at once allayed. A monetary crisis occurred in 1875. In 1878 the City of Glasgow Bank stopped payment, when losses of over £6,000,000 were found to have been made. Baring's Bank suspended in 1890. The failure of the City of Glasgow Bank led to the adoption of limited liability by English joint stock banks.

In times of panic the Bank of England recognises that the best way to restore confidence is to lend with freedom. Walter Bagehot, in his *Lombard Street*, says: "It is ready lending which cures panics, and non-lending or niggardly lending which aggravates them."

On the outbreak of war with Germany in 1914, a limited moratorium was declared, and the Government issued an emergency currency of £1 and 10s. notes. (See MORATORIUM.)

PAPER CURRENCY. The paper instruments such as bank notes, cheques, bills, and other forms which take the place of money and act as a currency or circulating medium.

PAR INTERVENTION. The French form of our term "supra protest" (*q.v.*).

PAR OF EXCHANGE. This expression denotes a state of the foreign exchange between one country and another when the demand for and supply of bills exactly balance. It is a theoretical phrase only, because no one knows, as between any two nations, when the claims they each have upon the other are equal.

Distinguish from Mint Par of Exchange (*q.v.*).

PARCENERS. An abbreviation of co-parceners (*q.v.*).

PARI PASSU. (Latin, equal steps.) Where one matter is progressing *pari passu* with another, it means that they are both progressing with equal steps or equal energy.

Similarly where new shares or debentures are issued ranking *pari passu* with existing shares or debentures, it means that the rights attaching to the new are exactly the same as those attaching to the old.

PARISH COUNCIL. When a bank is appointed as banker to a Parish Council, a resolution should be obtained and the accounts opened in the name of the Council. Section 193 (8) of the Local Government Act, 1933, provides that every cheque or order for the payment of money by a Parish Council must be signed by two members of the Council.

Section 193 (4) provides that no loan may be raised by a Parish Council without the consent of the Parish Meeting and the approval of the County Council.

Under Section 195 (*d*) a County Council may lend money to a Parish Council without Government sanction.

For the purpose of obtaining funds to meet expenses, a Parish Council issues precepts to the Rural District Council in which the Parish is situate. (See LOCAL AUTHORITIES.)

PAROCHIAL CHURCH COUNCIL. By the Church of England Assembly (Powers) Act, 1919, powers in regard to legislation touching matters concerning the Church of England were (subject to the control of Parliament) conferred on the National Assembly of the Church of England constituted in accordance with the constitution as presented, 10th May, 1919.

By the Parochial Church Councils (Powers) Measure, 1921 (which Measure has effect as an Act of Parliament in accordance with the provisions of the above-named Act) it is

provided that there shall be transferred to the Parochial Church Council of every parish "all powers duties and liabilities of the churchwardens of such parish relating to the financial affairs of the Church, including the collection and administration of all moneys which may be raised for Church purposes and the keeping of accounts in relation to such affairs and moneys." In the Schedule (Rule 14) to this Measure, "the Council may appoint one or more of their number to act as treasurer solely or jointly without remuneration, and failing such appointment the churchwardens, if members of the Council, shall act jointly as treasurers."

By Section 3 of the Measure "every Council shall be a body corporate by the name of the Parochial Church Council of the parish for which they are appointed and shall have perpetual succession."

A Church account should therefore stand in the name of the Parochial Church Council of Parish, and the bank should be furnished with a copy of the resolution of the Council authorising the bank to open the account and giving instructions as to how cheques are to be signed. The resolution must (in accordance with Section 3) be signed by the chairman presiding at that meeting and by two other members of the Council.

A Parochial Church Council can acquire and administer property which must be vested in the Diocesan Authority.

A Parochial Church Council may borrow. The power of a Parochial Church Council to borrow money is inferentially recognised and therefore implicitly conferred by the Parochial Church Councils (Powers) Measure, 1921. But the power of the Council to bind its property is limited, and if a mortgage is necessary, it must be granted by the Diocesan Authority, and the consent of the Charity Commissioners secured. (Opinion No. 52 of the Legal Board of the Church Assembly.)

PARQUET. (French, an enclosure.) The official brokers, *agents de change*, on the Paris Exchange, form the Parquet; the unofficial dealers form the Coulisse.

PART PAYMENT. INLAND BILL. A part payment may be made by the acceptor at the maturity of a bill, in which case the bill should be indorsed "Received in part payment without prejudice to the rights of the other parties." The holder can sue for the balance. Notice that full payment has not been made should be given to the drawer and indorsers. The bill itself is, of course, retained by the holder. The bill should be noted for the unpaid balance.

FOREIGN BILL. Where a part payment is made, a foreign bill must be protested as to the balance.

CHEQUE. Cheques are either paid in full or they are not paid at all. A part payment is not made. In Scotland, however, when a cheque is presented, if payment cannot be made in full, any balance in the drawer's account is attached in favour of the presenter. The banker transfers such amount to a special account.

CASH ORDER. Part payment of a cash order is not accepted, unless under instructions to do so from the correspondent who sent the document for collection.

PARTIAL ACCEPTANCE. (See ACCEPTANCE QUALIFIED.)

PARTIAL INDORSEMENT. An indorsement of a bill of exchange which purports to transfer a part only of the amount payable, or purports to transfer the bill to two or more indorsees severally, does not operate as a negotiation of the bill. (See INDORSEMENT.)

PARTICIPATING PREFERENCE SHARES. (See PREFERENCE SHARES.)

PARTICULAR AVERAGE. A term used in connection with shipping. In the case of a general average, a loss incurred for the common safety of the ship and cargo is borne by all the parties interested in the ship and cargo in proportion to their interests; but a particular average or loss is borne entirely by the owner (or his insurer) of the property which has been lost or damaged. His property may have become damaged by accident as by the sea, or may have got washed overboard, and in such cases (the loss or damage not having been incurred intentionally to save the ship), the owner alone is responsible. (See GENERAL AVERAGE.)

PARTIES TO BILL OF EXCHANGE. The parties to a bill of exchange are the drawer, the acceptor (called the drawee before he accepts it), the payee (who is often the same person as the drawer) and the indorsers. The parties may be either "immediate" or "remote." They are "immediate parties" when they are immediately connected with each other as the drawer and acceptor, the drawer and payee, and an indorsee and the indorser immediately in front of him. They are "remote parties" when they are not closely related to each other, as the acceptor and an indorsee.

With regard to the capacity and authority of parties to a bill, the Bills of Exchange Act, 1882, provides—

"Section 22. (1) Capacity to incur

liability as a party to a bill is co-extensive with capacity to contract.

"Provided that nothing in this Section shall enable a corporation to make itself liable as drawer, acceptor, or indorser of a bill unless it is competent to it so to do under the law for the time being in force relating to corporations.

"(2) Where a bill is drawn or indorsed by an infant, minor, or corporation having no capacity or power to incur liability on a bill, the drawing or indorsement entitles the holder to receive payment of the bill, and to enforce it against any other party thereto.

"Section 23. No person is liable as drawer, indorser, or acceptor of a bill who has not signed it as such: Provided that—

"(1) Where a person signs a bill in a trade or assumed name, he is liable thereon as if he had signed it in his own name:

"(2) The signature of the name of a firm is equivalent to the signature by the person so signing of the names of all persons liable as partners in that firm." (See BILL OF EXCHANGE.)

PARTITION. A deed of partition is for the purpose of dividing an estate, which is held in common by several persons, into an estate in severalty so that each person has then an absolute right to a distinct portion.

After 1925, tenancy in common cannot be created as a legal estate. (See TENANTS IN COMMON.)

By the Stamp Act, 1891, the stamp duty is—

	£	s.	d.
PARTITION or DIVISION — Instruments effecting.			
In the case specified in Section 73, see that Section under EXCHANGE.			
In any other case . .	10	0	

PARTNER. Where several persons join to carry on a business, the combination is called a firm or partnership, and the individual members are the partners. A partner who takes an active interest in the management of the business is called an active partner, as a distinction from a dormant or sleeping partner who merely supplies funds for the business. A nominal partner is one who simply lends his name and has no real interest in the partnership. A partner (whether active or sleeping) is liable for all the debts and obligations of the firm. A limited partner, however, is not liable beyond the amount contributed at the time of entering into the partnership. (See LIMITED PARTNERSHIP.) A general partner is the same as an ordinary partner. Everyone who has held himself out to be a partner in a particular firm is liable as a partner to anyone who has, on the faith of any such representation, given credit to the firm. (See DEATH OF PARTNER, PARTNERSHIPS.)

PARTNERSHIPS. The bulk of the law relating to partnership is codified in the Partnership Act of 1890, which defines a partnership as "the relation which subsists between persons carrying on a business in common with a view of profit." The law prescribes the minimum of formality in the setting up of this relationship; no registration is necessary, no written agreement or deed of partnership is requisite, though highly desirable; all that is necessary is some sort of agreement—written, verbal, or implied—between the parties. A limitation is imposed by the Companies Act, 1948, on the number of partners, however, ten in the case of banking firms and twenty in other cases. Any larger association of individuals for business purposes requires incorporation under the Companies Act, 1948.

A partnership, because it has a firm name, is not an entity existing apart from its members. In Scotland this is so, for Section 4 (2) of the Partnership Act, 1890, provides that a Scottish firm is a legal person distinct from the partners of whom it is composed, but in England and Wales there is no such conception of a partnership, and the firm name is but a convenient abbreviation for the names of all the members of the firm.

There is a distinction between co-ownership and partnership, and the rights and liabilities attaching to the latter differ from those belonging to the former. Joint tenancy, part ownership, the sharing of gross returns, do not necessarily connote partnership: the receipt of profits is *prima facie* but not conclusive evidence of the relationship. It is a question of intention. There are three broad distinctions between co-ownership and partnership. Firstly, co-ownership is not necessarily the result of agreement, while partnership is; secondly, co-ownership does not necessarily involve working for a profit, whilst partnership does; thirdly, a co-owner has the right of free disposition over his property, whilst one partner cannot replace himself by another without the consent of his co-partners.

There are two dominant principles underlying the relationship of the partners in a firm: firstly, the unlimited liability of each and every member of the firm for the firm's debts, and secondly, the power of any partner to bind his co-partners in the ordinary course of partnership business, subject to any restrictions in the Articles of Partnership of which outside parties may be aware.

Every partner is liable for the firm's debts to the full extent of his private resources in addition to his partnership capital; every secret partner is fully liable, whether the creditor was originally aware of his existence or not; any person who in any way holds himself out as a partner is fully liable for the firm's debts to the creditor who is thus misled.

The liability of partners in England and Wales for debts and contracts is joint only, whilst in Scotland it is joint and several. Thus in England and Wales care must be taken to join all partners in an action, preferably by suing the firm in the firm name; if this is not done, any unsatisfied judgment against those who are sued will effectively bar an action against any uncited partners.

There is a modification of the principle of joint liability in that on the death or bankruptcy of a partner, his responsibility for the partnership debts is not extinguished and his estate is liable. But in the absence of several liability, partnership creditors are postponed to the creditors of the private estate, who must be paid in full before any distribution is made in respect of the firm's debts.

On the opening of a partnership account, if articles of partnership exist, they should be scrutinised to find out, amongst other things, if any of the implied rights of the partners are restricted or modified, and if arrangments are made regarding operations on the banking account. If nothing is said about these matters, any partner is entitled to draw cheques in the firm name, and by so doing he will bind the firm. "The signature of the name of the firm is equivalent to the signature by the person so signing of the names of all persons liable as partners in the firm." (Bills of Exchange Act, 1882, Section 23 (2).) It is usual, however, to take express instructions as to who may draw on the account and the form of signature to be employed. Some banks have a special form of mandate for the opening of partnership accounts, whilst others make use of the form of authority devised for joint accounts. But if no form of mandate is taken, a cheque signed in the firm name by any partner will be a good discharge to the bank against the firm, in the absence of abnormal circumstances.

One partner has power to countermand the payment of cheques drawn by another. The question of the payment of cheques presented after notice of the death of a partner does not depend on whether the cheque was drawn by the deceased partner, for his signature in the firm name is equivalent to the signatures of all members of the firm. On the one hand, as the decease of a partner puts an end to the partnership as such, the authority of any one partner as agent for the firm is revoked, and on these grounds it would seem that such cheques should not be paid. On the other hand, the surviving partners can deal with the account for the purpose of winding up the firm, and could consequently confirm any cheques outstanding at the time of decease.

Transactions on the private account of a partner require scrutiny in certain circumstances. Cheques payable to the firm should not be accepted for the private account of a partner without inquiry being made of the other partners. In the absence of inquiry, such a transaction would deprive a banker of the protection of Section 82 of the Bills of Exchange Act on the ground of negligence. If, however, a partner pays to the credit of his private account a cheque drawn by him on the firm's account, there is no *prima facie* case for inquiry—the transaction may represent repayment of a loan to the firm or a share of partnership profits. In *Backhouse* v. *Charlton* (1878), 8 Ch.D. 444, transfers of this description were held to be regular on the face of them. The particular circumstances, however, such as the standing of the partner and the amount of the cheque, would influence a banker in dealing with such a situation. Where a banker has been pressing for reduction or repayment of a private overdraft, however, and the partner responds by offering for his credit a cheque drawn by him on the partnership account, inquiries are called for.

One partner is entitled to open an account for the firm's business provided that he opens it in the firm name. (*Alliance Bank* v. *Kearsley* (1871), L.R. 6 C.P. 433.)

As regards borrowing and bill transactions, a partner's authority depends on whether the firm is a trading or non-trading

partnership. A trading business has been defined as one which depends on the buying and selling of goods. (*Higgins* v. *Beauchamp*, [1914] 3 K.B. 1192.) Thus professional partnerships, such as doctors, solicitors, and accountants, are non-trading firms, and in decided cases, the businesses of farmers and innkeepers have been held to be non-trading partnerships.

In a trading firm any partner, unless prohibited by the terms of the partnership agreement, has actual authority to pledge and sell the assets of the firm, to contract debts, to borrow, and to draw, accept, indorse, and discount bills of exchange. In a non-trading firm, however, no such authority exists. It is well settled, however, that a partner in a non-trading firm has implied power to bind the firm by drawing cheques. (*Backhouse* v. *Charlton*.) In practice, express authority is taken from the members of a firm—whether trading or non-trading—as to the method by which advances are to be negotiated, partnership assets pledged, and bill transactions effected.

In England and Wales partnership liability is joint only, and it is desirable to get the members of a borrowing firm to covenant for joint and several liability. Amongst other advantages it will mean that a banker's position in the administration of a deceased partner's estate will be improved, for he will not have to wait until the private creditors of the deceased have been satisfied, but can claim side by side with them for any debt due by the firm. Furthermore, such a provision will give a banker a right of set-off on any private account of a partner in respect of the firm's debt, and in the event of bankruptcy he will have a right of double proof, for a joint and separate creditor may prove concurrently on the joint estate and the separate estate, his redress being limited, of course, to twenty shillings in the pound.

As regards the pledging or mortgaging of security for advances, it is the usual practice to get all members of the firm to execute the necessary documents. One partner could, in a trading firm, validly pledge negotiable instruments and also execute a memorandum of deposit over the deeds of partnership property. He could not, however, give a legal mortgage over such property, for one partner cannot bind the firm by deed, unless authorised so to act, in which case the authority itself would have to be by deed. A legal mortgage given by one partner in the absence of proper authority would not be wholly void, however—it could be treated as an equitable charge, for in transactions where a deed is not necessary the seal may be disregarded and the signature considered as applying to a document under hand. Thus in *Marchant* v. *Morton Down & Co.*, [1901] 2 K.B. 829, one partner sought to make a legal assignment of the firm's debts, under seal. It was held that whilst he had no power to bind the firm by deed, his signature to the document would be construed as the execution of an equitable assignment under hand.

When title deeds of property are offered as security, they may be in the sole name of one partner or in the names of all partners jointly. In the first instance, the property in question may belong to one partner in his own right, the firm having a tenancy thereof, or it may be held by him in trust for the partnership, in which case all partners should join in the execution of any charge, or give an authority for him to mortgage it. Where the property is vested in all the partners jointly, if there are more than four partners, such property cannot now be vested in more than four of them; it may be partnership property or not, according as to whether it has been treated as part of the firm's assets or not. In either case, however, the mortgage of the property will require to be executed by all, for it will be vested in the several parties on trust for sale specifying that they hold the property for themselves as tenants in common in equity or jointly as partners.

When searching the Land Charges Register or other appropriate register in respect of partnership property, searches should be made against the names of all the partners, as well as against the name of the firm, for it is probable that any registration will have been made against the individual names of the partners.

Sometimes a guarantee of one partner or a joint and several guarantee of all the partners is taken in respect of a borrowing by the firm. Inasmuch, however, as all the partners are already unlimitedly liable for the firm's debts, such a guarantee appears at first sight to be superfluous, but it has the merit of giving the banker a right of proof against the private estate of each partner without waiting until the private creditors are satisfied. If, however, joint and several liability has been established on the opening of the account, the same right of proof accrues, so that in such a case a guarantee has no practical advantage. It is considered by some bankers that the

taking of a guarantee brings home to the partners a sense of their personal liability for the firm's debts; on the other hand it is as well to inform them that the amount of the guarantee is not the limit of their responsibility and does not free them from liability for any borrowing in excess of the amount specified in the document.

Occasionally the guarantee of a firm is offered to secure the debt of a third party, and in such a case the signatures of all the partners should be taken to a joint and several guarantee, for one partner cannot, in the absence of specific authority, bind his co-partners by executing a guarantee in the firm name.

The partnership relation is severed on the retirement, death, or bankruptcy of one partner as well as in those cases where a dissolution of the firm takes place by agreement or order of the Court or the bankruptcy of the firm itself.

If the members of a firm decide to wind up the business, or if the Court decrees a dissolution, the partners' authority to bind the firm continues in so far as its exercise is necessary to wind up the affairs of the business; if, however, the members of the firm are in disagreement and resort is made to the Courts, it is not infrequent for the winding-up to be put into the hands of a receiver. In such a case, a credit balance on the firm's account can safely be paid over to the receiver, after due confirmation of his appointment. A partner's unlimited powers as agent for the firm then cease, for the trading activities of the firm are terminated and the receiver's function is to realise the partnership assets, pay out the firm's creditors and distribute any surplus amongst the partners, in accordance with the terms of the articles, if any. Occasionally a manager is appointed by the Court, and his powers are wider than those of a receiver for he is empowered to carry on the business for the time being, to fulfil existing contracts and to enter into such new contracts as are essential to the ordinary conduct of the business. In this case also the Court appointment of a manager will be sufficient mandate to the banker to recognise his authority to deal with the firm's balance. Any borrowings that may be allowed on the account of a manager or receiver are his personal responsibility, and he cannot validly charge any assets of the firm as security without the leave of the Court.

Such examples of dissolution are comparatively infrequent, as compared with the cases where dissolution automatically takes place by the retirement, death, or bankruptcy of one partner. Any change in the membership of a firm occasioned by the withdrawal, decease, or insolvency of a partner, virtually puts an end to the firm; the surviving or remaining partners may continue to trade under the firm name, but in fact a new firm is created, if they carry on for any purpose other than to wind up the affairs of the old firm.

In the case of the retirement of a partner, he will be liable for advances subsequently made to the firm unless the firm's bankers are notified of the severance of his relations with his co-partners, for Section 36 of the Partnership Act decrees that "where a person deals with a firm after a change in its constitution, he is entitled to treat all apparent members of the old firm as still being members of the firm until he has notice of the change." A secret partner, however, could not be saddled with any liability for the firm's indebtedness after his retirement, even though he omitted to notify the bank, for the equitable reason that credit was given to the firm without knowledge of, or reliance on, his membership thereof.

On notification of the retirement of a partner, the banker's action will depend on several circumstances.

If the account is in debit and security of the retiring partner is held, the accounts should be broken in order to establish the banker's rights over the security for the debt existing at the date of notification of retirement.

If the security consists of partnership assets, such as the deeds of property jointly charged, the banker can continue the account for the time being, as the presumption is that the remaining partners are carrying on the business for the purpose of winding it up. If the retirement of one partner is accompanied by the admission of a new partner, a conveyance of the property is sometimes executed by the old firm in favour of the new firm and this will entail the charging of the security anew. In such a case it is advisable to break the old account and start afresh, a cheque being drawn on the new account for the amount of the old debt by all members of the firm including the new partner, for an incoming partner is not necessarily liable for the debts of the old firm. If a separate conveyance of the partnership property is not made, the incoming partner should

indorse the old form of charge to the effect that he agrees that the security covered thereby shall be available for the debts of the new firm as well as the old.

The death of a partner likewise has the legal effect of dissolving the firm. The personal representatives of the deceased have no power to step into the dead partner's shoes—they cannot take any part in the management of the firm, and their sole concern is to see that a proper account is taken of what is due to the estate they are administering.

In the case of a credit account, there appears to be no reason why the account should not be continued unbroken by the surviving partners. In *Backhouse* v. *Charlton* (1878), 8 Ch.D. 444, it was held that where a banker had no notice of the state of accounts between the deceased partner and the survivor, he was under no duty to inquire. The banker is entitled to presume, in the absence of anything to the contrary, that the survivors will account to the representatives of the deceased for his share of the assets. In the case where the firm is indebted to the bank, any action will depend on the nature of the security lodged. If it was charged by the deceased as his private property the account must be stopped in order to fix the liability of his estate, for otherwise all sums credited after the crucial date will go to the reduction of the liability whilst all fresh debits will not be covered by the security held. If, however, the security held is partnership property, the account can be continued unbroken for the time being, for the surviving partners are entitled to deal with the firm's assets so far as may be necessary to wind up the partnership business.

The power of the surviving partners in a firm to continue the partnership business in so far as it is compatible with the winding up of the firm, is illustrated as far as banking operations are concerned by the case of *In re Bourne, Bourne* v. *Bourne*, [1906] 2 Ch. 427. Here an overdrawn banking account of a firm was continued unbroken after the death of one of the two partners, named Grove, and the survivor, Bourne, at a later date gave the bank an equitable charge on the deeds of real estate which formed part of the partnership assets. On the death of Bourne, the mortgaged property was sold and the bank's right to appropriate as much of the proceeds of sale as was necessary to satisfy its debt was disputed by the executors of the partner first deceased. In the lower Court, the bank's claim was upheld, and the decision was confirmed on appeal. The executors of Grove claimed that Bourne had no right to mortgage the partnership property after the death of Grove, and contended that the payments into the account after his decease and before the mortgage of the property was given had extinguished the original debt and that by the working of the Rule in *Clayton's* case the debt remaining at the time of Bourne's death was a subsequent creation, which could not be effectively secured by the mortgage of partnership property. The Appeal Court held, however, that it is both the right and duty of a surviving partner to realise the firm's assets, and in giving effect to this duty he can validly mortgage partnership property. In this case, the bank was entitled to assume that the overdraft was a partnership matter in the absence of anything showing to the contrary, and hence the account was properly continued on an unbroken basis, and payments in could be appropriated to payments out right up to the time when matters were crystallised by the death of the surviving partner.

If, however, a banker is fixed with notice that a surviving partner is continuing the business for his own ends and not for the purpose of winding up the firm, any charge given by him over partnership assets would be subject to the rights of the estate of the deceased partner.

A third cause of dissolution of a firm is found in the bankruptcy of one of the partners. In such a case his authority to act on behalf of the firm, including powers to operate on the banking account, at once ceases and his estate will not be liable for the debts contracted thereafter by the solvent partners. Such partners are entitled to continue the business for the purpose of winding up, to get in the assets and to complete transactions unfinished at the time of dissolution. They may continue to operate on the banking account to this end and payment of cheques drawn by them will be a good discharge against the firm and the trustee. Neither the trustee in bankruptcy nor the insolvent partner has any power, however, to deal with the partnership affairs, and the trustee's interest in the business lies in getting an account of the partnership business taken with a view to receiving the bankrupt's share therein.

A cheque presented signed by a partner known to have committed an act of bankruptcy should not be paid until confirmation of the other partners is obtained.

If there is a credit balance on the account of a firm, a member of which has become bankrupt, it can safely be paid to the solvent partners. If, however, the firm is in debt to the bank, and it is desired to retain any rights on the bankrupt's estate, it is necessary to break the firm's accounts.

If joint and several liability is not established, the bank will be postponed in proving on the partner's private estate until all his separate creditors have been paid in full, which may mean that there will be nothing to come by way of dividend. If, however, joint and several liability has been stipulated for on the firm's account, the banker can prove as a creditor on equal footing with the partner's private creditors. In either case there is no need to deduct the value of any partnership security before proving against the private estate of the bankrupt partner.

The last case of dissolution to be considered is where the partnership itself becomes bankrupt. On such a happening the authority of the several partners to act for the firm ceases and the business vests in the trustee in bankruptcy in order to be wound up. Inasmuch as the title of the trustee relates back to the earliest of the acts of bankruptcy committed during the three months preceding the presentation of the bankruptcy petition, any transactions with the firm since that time are void as against the trustee unless covered by Sections 45 or 46 of the Bankruptcy Act, 1914. (See BANKRUPTCY.)

The bankruptcy of the firm involves the bankruptcy of the individual partners, and any steps taken with regard to the firm's account are equally applicable to the private accounts of the partners.

The principle in the administration of the respective estates is that the firm's debts are payable in the first instance out of the partnership assets and the private debts of the partners from their private assets. If a surplus results from any of the separate estates of the partners, it must be brought into the joint estate of the firm; and if a surplus accrues on the joint estate it is appropriated to the respective separate estates of the partners in due proportion.

There is an exception, however, to the rule of keeping the joint and the separate estates distinct in the first instance, and it is this—if there is no joint estate, on account of a *total* lack of assets or because all the firm's assets are mortgaged with no available equity, the partnership creditors can prove on equal footing with the creditors of the partners' separate private estates.

If partnership securities are held, which it is not proposed to renounce or realise forthwith, their value must be assessed before proving; if the security is collateral in the sense that it is lodged by a partner as a private asset, a banker is entitled to prove for the entire debt of the firm, and to realise the partner's security without diminishing his claim against the firm's estate. If joint and several liability has been established and thus a right of double proof obtained, and the security is partnership property, proof should be made against the private estates for the whole debt without regard to the security and against the firm's estate after allowing for the value of the security. If, on the other hand, the security is the private property of a partner, i.e. collateral, proof for the full amount can be made against the firm's estate, ignoring the security, the proof against the particular partner's estate being decreased by the assessed value of the security.

Security may be held available for the debt not only of the firm but of an individual partner. In such a case this security can be appropriated to whichever of the two estates the banker chooses and then he can proceed on the lines just indicated. Before making any allocation, however, the statement of affairs of the respective estates should be studied in order to see the prospects of dividends. As a general principle, it will be of advantage to allocate the security (which may be partnership property lodged to secure both the firm's and the partner's debts or the partner's own property covering the firm's advance as well as his own) to the estate to which it does not belong, because such a course will mean that a banker will not have to account for the value of the security in respect of either debt, treating it simply on a collateral basis.

The insanity of a partner in a firm does not operate as a dissolution of the firm like death, but by Section 35 of the Partnership Act it is a ground for petitioning the Court for a dissolution. The Court's intervention may be sought by a co-partner or by the patient's Committee if one has been appointed, or by his next friend, or by anyone having a title to move in the matter. It is necessary, of course, for the partner to have been found insane by inquisition—a very rare method—or to have been proved to be of unsound mind to the satisfaction of the Court. Apart from these steps, by the

Lunacy Act, 1890, power is given to a lunacy judge to dissolve a partnership when a partner becomes of unsound mind. (See also LIMITED PARTNERSHIP.)

By the Companies Act, 1948—

Prohibition of Large Partnerships.

"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.

"434. 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."

The following are the principal Sections of the Partnership Act, 1890 (53 & 54 Vict. c. 39) from the point of view of persons dealing with partnerships—

NATURE OF PARTNERSHIP.

Definition of Partnership.

"1. (1) Partnership is the relation which subsists between persons carrying on a business in common with a view of profit.

"(2) But the relation between members of any company or association which is—

"(*a*) Registered as a company under the Companies Act, 1862, or any other Act of Parliament for the time being in force and relating to the registration of joint stock companies; or

"(*b*) Formed or incorporated by or in pursuance of any other Act of Parliament or letters patent, or Royal Charter; or

"(*c*) A company engaged in working mines within and subject to the jurisdiction of the stannaries:

is not a partnership within the meaning of this Act.

Rules for Determining Existence of Partnership.

"2. In determining whether a partnership does or does not exist, regard shall be had to the following rules—

"(1) Joint tenancy, tenancy in common, joint property, common property, or part ownership does not of itself create a partnership as to anything so held or owned, whether the tenants or owners do or do not share any profits made by the use thereof.

"(2) The sharing of gross returns does not of itself create a partnership, whether the persons sharing such returns have or have not a joint or common right or interest in any property from which or from the use of which the returns are derived.

"(3) The receipt by a person of a share of the profits of a business is *prima facie* evidence that he is a partner in the business, but the receipt of such a share, or of a payment contingent on or varying with the profits of a business, does not of itself make him a partner in the business; and in particular—

"(*a*) The receipt by a person of a debt or other liquidated amount by instalments or otherwise out of the accruing profits of a business does not of itself make him a partner in the business or liable as such:

"(*b*) A contract for the remuneration of a servant or agent of a person engaged in a business by a share of the profits of the business does not of itself make the servant or agent a partner in the business or liable as such:

"(*c*) A person being the widow or child of a deceased partner, and receiving by way of annuity a portion of the profits made in the business in which the deceased person

was a partner, is not by reason only of such receipt a partner in the business or liable as such:

"(*d*) The advance of money by way of loan to a person engaged or about to engage in any business on a contract with that person that the lender shall receive a rate of interest varying with the profits, or shall receive a share of the profits arising from carrying on the business, does not of itself make the lender a partner with the person or persons carrying on the business or liable as such. Provided that the contract is in writing, and signed by or on behalf of all the parties thereto:

"(*e*) A person receiving by way of annuity or otherwise a portion of the profits of a business in consideration of the sale by him of the goodwill of the business is not by reason only of such receipt a partner in the business or liable as such.

Postponement of Rights of Person Lending or Selling in Consideration of Share of Profits in Case of Insolvency.

"3. In the event of any person to whom money has been advanced by way of loan upon such a contract as is mentioned in the last foregoing Section, or of any buyer of a goodwill in consideration of a share of the profits of the business, being adjudged a bankrupt, entering into an arrangement to pay his creditors less than twenty shillings in the pound, or dying in insolvent circumstances the lender of the loan shall not be entitled to recover anything in respect of his loan, and the seller of the goodwill shall not be entitled to recover anything in respect of the share of profits contracted for, until the claims of the other creditors of the borrower or buyer for valuable consideration in money or money's worth have been satisfied.

Meaning of Firm.

"4. (1) Persons who have entered into partnership with one another are for the purposes of this Act called collectively a firm, and the name under which their business is carried on is called the firm-name.

"(2) In Scotland a firm is a legal person distinct from the partners of whom it is composed, but an individual partner may be charged on a decree or diligence directed against the firm, and on payment of the debts is entitled to relief *pro rata* from the firm and other members.

RELATIONS OF PARTNERS TO PERSONS DEALING WITH THEM.

Power of Partner to Bind the Firm.

"5. Every partner is an agent of the firm and his other partners for the purpose of the business of the partnership; and the acts of every partner who does any act for carrying on in the usual way business of the kind carried on by the firm of which he is a member bind the firm and his partners, unless the partner so acting has in fact no authority to act for the firm in the particular matter, and the person with whom he is dealing either knows that he has no authority or does not know or believe him to be a partner.

Partners Bound by Acts on Behalf of Firm.

"6. An act or instrument relating to the business of the firm and done or executed in the firm-name, or in any other manner showing an intention to bind the firm, by any person thereto authorised, whether a partner or not, is binding on the firm and all the partners.

"Provided that this Section shall not affect any general rule of law relating to the execution of deeds or negotiable instruments.

Partner using Credit of Firm for Private Purposes.

"7. Where one partner pledges the credit of the firm for a purpose apparently not connected with the firm's ordinary course of business, the firm is not bound, unless he is in fact specially authorised by the other partners; but this Section does not affect any personal liability incurred by an individual partner.

Effect of Notice that Firm will not be Bound by Acts of Partner.

"8. If it has been agreed between the partners that any restriction shall be placed on the power of any one or more of them to bind the firm, no act done in contravention of the agreement is binding on the firm with respect to persons having notice of the agreement.

Liability of Partners.

"9. Every partner in a firm is liable jointly with the other partners, and in Scotland severally also, for all debts and obligations of the firm incurred while he is a partner; and after his death his estate is also severally liable in a due course of administration for such debts and obligations, so far as they remain unsatisfied, but subject in England or Ireland to the prior payment of his separate debts."

With respect to the joint liability referred to in Section 9, a creditor bringing an action should sue all the partners jointly, and having obtained judgment the creditor is then at liberty to levy execution against the partnership property or against all, or any, of the separate estates of the partners, each partner being liable to the full extent of his fortune for the debts of the firm. It is to be noted that this joint liability is also several in Scotland. The same Section provides that the estate of a deceased partner is also severally liable for the firm's debts, but, in England or Ireland, subject to the prior payment of the deceased's separate debts. When an advance is made to a firm, it is desirable for a banker to hold an undertaking signed by all the partners agreeing to be jointly and severally liable for any debt on the partnership account, because the partners may then be sued either jointly or severally, and the banker will have the right to set off any credit balances on the partners' separate accounts against a debt on the firm's account. In the absence of such an undertaking this right of set-off does not exist. When the partners have made themselves jointly and severally liable, the banker has further advantages, as upon the death of a partner his claim against the deceased's estate for a debt upon the firm's account would not be postponed to the payment of the deceased's separate debts, and in the event of bankruptcy the banker would be entitled to prove against the estate of the firm and at the same time against the separate estates of the partners. (See BANKRUPT PARTNERSHIP under BANKRUPT PERSON.)

Liability of the Firm for Wrongs.

"10. Where, by any wrongful act or omission of any partner acting in the ordinary course of the business of the firm, or with the authority of his co-partners, loss or injury is caused to any person not being a partner in the firm, or any penalty is incurred, the firm is liable therefor to the same extent as the partner so acting or omitting to act.

Misapplication of Money or Property Received for or in Custody of the Firm.

"11. In the following cases; namely—

"(*a*) Where one partner acting within the scope of his apparent authority receives the money or property of a third person and misapplies it; and

"(*b*) Where a firm in the course of its business receives money or property of a third person, and the money or property so received is misapplied by one or more of the partners while it is in the custody of the firm;

the firm is liable to make good the loss.

Liability for Wrongs Joint and Several.

"12. Every partner is liable jointly with his co-partners and also severally for everything for which the firm while he is a partner therein becomes liable under either of the two last preceding sections.

Improper Employment of Trust-Property for Partnership Purposes.

"13. If a partner, being a trustee, improperly employs trust-property in the business or on the account of the partnership, no other partner is liable for the trust-property to the persons beneficially interested therein:

"Provided as follows—

"(1) This Section shall not affect any liability incurred by any partner by reason of his having notice of a breach of trust: and

"(2) Nothing in this Section shall prevent trust money from being followed and recovered from the firm if still in its possession or under its control.

Persons liable by "Holding Out."

"14. (1) Everyone who by words spoken or written or by conduct represents himself, or who knowingly suffers himself to be represented, as a partner in a particular firm, is liable as a partner to anyone who has on the faith of any such representation given credit to the firm, whether the representation has or has not been made or communicated to the person so giving credit by or with the knowledge of the apparent partner making the representation or suffering it to be made.

"(2) Provided that where after a partner's death the partnership business is continued in the old firm-name,

the continued use of that name or of the deceased partner's name as part thereof shall not of itself make his executors' or administrators' estate or effects liable for any partnership debts contracted after his death.

Admissions and Representations of Partners.

"15. An admission or representation made by any partner concerning the partnership affairs, and in the ordinary course of its business, is evidence against the firm.

Notice to Acting Partner to be Notice to the Firm.

"16. Notice to any partner who habitually acts in the partnership business of any matter relating to partnership affairs operates as notice to the firm, except in the case of a fraud on the firm committed by or with the consent of that partner.

Liabilities of Incoming and Outgoing Partners.

"17. (1) A person who is admitted as a partner into an existing firm does not thereby become liable to the creditors of the firm for anything done before he became a partner.

"(2) A partner who retires from a firm does not thereby cease to be liable for partnership debts or obligations incurred before his retirement.

"(3) A retiring partner may be discharged from any existing liabilities, by an agreement to that effect between himself and the members of the firm as newly constituted and the creditors, and this agreement may be either express or inferred as a fact from the course of dealing between the creditors and the firm as newly constituted.

Revocation of continuing Guaranty by Change in Firm.

"18. A continuing guaranty or cautionary obligation given either to a firm or to a third person in respect of the transactions of a firm is, in the absence of agreement to the contrary, revoked as to future transactions by any change in the constitution of the firm to which, or of the firm in respect of the transactions of which, the guaranty or obligation was given.

Dissolution by Bankruptcy, Death, or Charge.

"33. (1) Subject to any agreement between the partners, every partnership is dissolved as regards all the partners by the death or bankruptcy of any partner.

"(2) A partnership may, at the option of the other partners, be dissolved if any partner suffers his share of the partnership property to be charged under this Act for his separate debt.

Rights of Persons dealing with Firm against Apparent Members of Firm.

"36. (1) Where a person deals with a firm after a change in its constitution he is entitled to treat all apparent members of the old firm as still being members of the firm until he has notice of the change.

"(2) An advertisement in the *London Gazette* as to a firm whose principal place of business is in England or Wales, in the *Edinburgh Gazette* as to a firm whose principal place of business is in Scotland, and in the *Dublin Gazette* as to a firm whose principal place of business is in Ireland, shall be notice as to persons who had not dealings with the firm before the date of the dissolution or change so advertised.

"(3) The estate of a partner who dies, or who becomes bankrupt, or of a partner who, not having been known to the person dealing with the firm to be a partner, retires from the firm, is not liable for partnership debts contracted after the date of the death, bankruptcy, or retirement respectively.

Continuing Authority of Partners for Purposes of Winding Up.

"38. After the dissolution of a partnership the authority of each partner to bind the firm, and the other rights and obligations of the partners, continue notwithstanding the dissolution so far as may be necessary to wind up the affairs of the partnership, and to complete transactions begun but unfinished at the time of the dissolution, but not otherwise.

"Provided that the firm is in no case bound by the acts of a partner who has become bankrupt; but this proviso does not affect the liability of any person who has after the bankruptcy represented himself or knowingly suffered himself to be represented as a partner of the bankrupt." (See COMPANIES, DEATH OF PARTNER, LIMITED PARTNERSHIP, LUNACY.)

PASS BOOK. The pass book, or its modern equivalent the pass book statement sheet, machined or hand-written, is a record in

debit and credit form of the ledger entries in a customer's current account. If the bank is expressed to be in account with the customer, credit items are entered on the left-hand side and debit items on the right-hand side, and *vice versa* if the customer is expressed to be in account with the bank.

Although it is a statement of account, it is not an account stated binding on the customer. The latter is under no obligation to look at it, and he is not bound by it when he has looked at it. He may require the banker to correct entries made in error against him, the customer, but he cannot be forced to accept a correction against him if he was honestly mistaken and misled by the wrongful entry and if he has honestly acted upon it, and it would be prejudicial to him to have the correction made.

In *Kepitigalla Rubber Estates Ltd.* v. *National Bank of India*, [1909] 2 K.B. 1010, Bray, J., approved the decision in the unreported case of *Chatterton* v. *London & County Bank*, in which Lord Esher refused to see any obligation on the part of a customer to examine his pass book, and held that there was no negligence in not looking at it, and thus no estoppel. This decision was approved in *Walker* v. *Manchester & District Banking Co.* (1913), 108 L.T. 728.

The effect of the statements, which are rapidly replacing the pass book, has not yet been tested in the Courts, but there is no reason to believe that they carry any greater obligation for the customer or protection of the banker than the pass book. Sometimes these statements are sent out with a form on which the customer is asked to acknowledge the position of his account as given on the form. The effect of this, too, has not yet been tested.

PASS SHEETS. (See PASS BOOK.)

PASSING A DIVIDEND. A term used when a company decides not to pay a dividend; it is not to be confused with the passing of a resolution to pay a dividend.

PASSPORT. A passport is an official document issued by the Foreign Office vouching for the respectability of the person named therein, and which is used by that person when travelling in foreign countries.

The Foreign Office issues the following regulations respecting passports—

HOW TO MAKE APPLICATION.

Personal Application. To facilitate the issue of passports, *applicants are recommended to make personal application* to any one of the Passport Offices (addresses given below) or at any Local or Resettlement Advice Office of Ministry of Labour and National Service.

LONDON. 1 Queen Anne's Gate Buildings, Dartmouth Street, London, S.W.1. (Hours: 10 a.m. to 4 p.m.; Saturdays, 10 a.m. to 1 p.m.)

LIVERPOOL. Exchange Flags, Liverpool. (Hours: 9.30 a.m. to 4 p.m.; Saturdays, 9.30 a.m. to 1 p.m.)

GLASGOW. 10 Bothwell Street, Glasgow, C.2. (Hours: 9.30 a.m. to 4 p.m.; Saturdays, 9.30 a.m. to 1 p.m.)

MINISTRY OF LABOUR LOCAL OFFICE. (Hours: 9 a.m. to 5 p.m.; Saturdays, 9 a.m. to 1 p.m.)

The Passport Offices are also open *for cases of special emergency only*, between 4 p.m. and 6 p.m. (Saturdays, 1 p.m. and 4 p.m.), and *in London* on Sundays and Public Holidays between 10 a.m. and noon.

The relevant sections of the application form should be completed, and this form and the personal description form, together with the necessary documents, taken personally to one of these offices. The fee of 15s. should also be paid at any of these offices.

If an applicant wishes to obtain his passport through a Travel Agency, the documents can still be examined, and the signature and photographs witnessed at any of the Passport or Ministry of Labour and National Service Offices (see above). The applicant would then take the form to his agent, with whom arrangements for payment for the passport would be made.

Postal Applications. If it is not possible to make personal application at one of the Passport Offices or Ministry of Labour Local Offices, the completed, signed, and witnessed form with certified photographs and documents (excepting National Registration Identity Card) should be forwarded, together with a postal order for 15s., to *one of the three Passport Offices whose address is given above.* (N.B.—Cheques cannot be accepted.)

Applicants resident in Northern Ireland should in all cases apply by post to the Passport Office, Exchange Flags, Liverpool.

DOCUMENTS TO BE PRODUCED.

Note. Any applicant (other than a naturalised or registered British subject) who surrenders with this application previous passport(s) establishing his/her (and his wife's) identity and nationality will not normally be required to produce any other documents (excepting National Registration Identity Card when personal application is made) unless the name or status has been changed since the issue of the previous passport(s). See (iv).

(i) *Males (married or single) and women who have not been married* should produce birth certificate (either full or short, or

certificate of registration of birth), certificate of naturalisation or registration as a citizen of the United Kingdom and Colonies when applicable, National Registration Identity Card or current Armed Forces Identity document. If a married man wishes to include his wife on his passport, the marriage certificate, her birth certificate, and National Registration Identity Card should, and where relevant her naturalisation or registration certificate, be produced.

(ii) *Married women (including widows and women whose marriage has been dissolved or annulled)* applying for a separate passport should produce documents specified as (i) above, together with marriage certificate, husband's British passport or birth certificate; and in cases in which the applicant's marriage has been dissolved, annulled, or declared void, the final decree of dissolution or annulment.

(iii) *Children. Under* 16 to be included in the passport. The children's birth certificates. If the applicant is not the children's father, proof of legal guardianship or a letter of consent from the father or other legal guardian is required.

Sixteen years of Age and under 21. Documents as for males and single women (see paragraph (i) above); the written consent of father or other legal guardian is also required, except where the applicant is married or a member of H.M. Forces.

Note. Where an Order has been made by the High Court or by a magistrate regarding the custody of the child, such Order must be produced.

(iv) *Change of Name.* If the applicant has changed his or her name, the deed poll recording the change or other evidence to show how and when it was changed must also be submitted. A fresh National Registration Identity Card in a new name is regarded as evidence that a change of name has been effected.

(v) *Persons born outside the United Kingdom and Colonies* will be required to produce documentary evidence in support of the statements in Section 4.

Photographs.

Two copies of a recent photograph of the applicant (and also of the photograph of the applicant's wife where a joint passport is applied for) must be included with the application. These photographs must be taken full face without hat, and the photographs must not be mounted. The size of the photographs must not be more than $2\frac{1}{2}$ *inches by* 2 *inches* or less than 2 *inches by* $1\frac{1}{2}$ *inches.* The photographs must be printed on normal thin photographic paper and must not be glazed on the reverse side. The examining officer (or witness) is also required to endorse the reverse side of one copy of the photograph with the words: "I certify that this is a true likeness of the applicant Mr. (Mrs. or Miss) . . ." and add his signature.

Where a joint passport is applied for, one copy of the wife's photograph should be similarly certified.

Signing the Form. The application form must be signed by the applicant (and by the wife if to be included in the passport) *in the presence* of the examining officer at one of the three Passport Offices or at any Local or Resettlement Advice Office of the Ministry of Labour and National Service. *Note.* If the applicant cannot attend at any of these offices, he or she can have his or her signature witnessed by a Member of Parliament, Justice of the Peace, Minister of Religion, member of the medical or legal profession, Bank Officer, or a Senior Public Official, who should complete Section 10 and certify on the reverse side of one of the photographs that it is a true likeness of the applicant. (Wife's photograph to be certified similarly if she is to be included in the passport.)

Persons, such as bank officials, who are asked to verify the application and vouch that the applicant is a fit and proper person to receive a passport, must do so only from personal knowledge and not from information obtained from other persons.

A passport consists of a strongly-bound booklet of 32 pages. The inside cover contains the following—

"Her Britannic Majesty's Principal Secretary of State for Foreign Affairs Requests and requires in the name of Her Majesty all those whom it may concern to allow the bearer to pass freely without let or hindrance and to afford the bearer such assistance and protection as may be necessary."

On page 1 appears the number of the passport, the name of the bearer, whether accompanied by his wife and children, and the national status. On page 2 is the description of the bearer and his or her signature. Page 3 is reserved for the photo of bearer and his wife. Page 4 sets out the list of countries for which the passport is valid, the date of expiry and place of issue.

Page 5 is reserved for renewals.

Pages 6–30 are available for visas.

On pages 31 and 32 are entered particulars of foreign currency taken by bearer for travelling expenses.

The stamp duty of 6d. on passports was abolished by the Finance Act, 1949.

PAST DUE BILLS. (See OVERDUE BILL.)

PAY DAY. Also known as settling day. The fifth day of the semi-monthly settlement on the London Stock Exchange, when the cash for a stock transaction is handed over by the purchaser, through his broker, to the seller and differences are settled. In most stocks, pay days occur twice a month, but in Consols, once only. (See SETTLING DAYS, STOCK EXCHANGE.)

PAYABLE AS PER INDORSEMENT. (See EXCHANGE AS PER INDORSEMENT.)

PAYEE. The payee in a bill, or cheque, is the person named therein to whom, or to whose order, payment is directed to be made.

If the bill is payable to "John Brown or order," John Brown is the payee, and he should indorse it before the bill can be negotiated. When he has indorsed it—that is, has written his name upon the back—he is called an indorser.

Bills are frequently drawn "Pay to me or my order." In such bills the drawer and the payee are the same person, and the drawer must indorse the bill before negotiation. By Section 5 (1), of the Bills of Exchange Act, 1882, "A bill may be drawn payable to, or to the order of, the drawer; or it may be drawn payable to, or to the order of, the drawee."

Until a payee indorses a bill he is not liable thereon, but when he indorses it he incurs the liabilities of an indorser. (See INDORSER.)

The Bills of Exchange Act, 1882, Section 7, provides as follows—

"(1) Where a bill is not payable to bearer, the payee must be named or otherwise indicated therein with reasonable certainty.

"(2) A bill may be made payable to two or more payees jointly, or it may be made payable in the alternative to one of two, or one or some of several payees. A bill may also be made payable to the holder of an office for the time being.

"(3) Where the payee is a fictitious or non-existing person the bill may be treated as payable to bearer."

When a person accepts a bill, he is precluded from denying to a holder in due course the existence of the payee and his then capacity to indorse. The acceptor is not, however, responsible for the genuineness or validity of the payee's indorsement.

Where a bill or cheque is payable to two or more payees who are not partners, all must indorse, unless there is an authority for one of them to sign for the others. If one of them is dead, payment may be made to the survivor on satisfactory proof of death.

Where a cheque payable to John Brown is presented over the counter by a stranger who represents himself to be the executor of Brown, the banker is entitled to ask for exhibition of the probate of Brown's will.

If a payee's name is misspelt, he should indorse the bill or cheque in precisely the same way, and add his proper signature below.

A cheque which is payable to "John Brown only" is not capable of being transferred to anyone else, as the word "only" cancels the negotiability of the instrument. A bill payable to "John Brown only" should not be discounted as, in the event of the bill being dishonoured, the banker could not sue upon it.

Where there are several payees and the bill is payable in the alternative to one or some, only those who actually indorse the bill are liable thereon.

If the payee is an infant, or corporation having no power to contract, the payee can indorse and effectually transfer the bill to another party, but such a payee will not be liable on the bill.

In the case of a cheque drawn "Pay order," it has been held as being payable to the order of the drawer and, therefore, requiring his endorsement (*Chamberlain* v. *Young*, [1893] 2 Q.B. 206). It is not a banker's duty to advise a holder to insert his own name in the blank. If not indorsed by the drawer, the best course is to get the incomplete cheque completed by the drawer. If payable to "or order" the cheque should be returned for the drawer to insert the payee's name.

Where a payee is dead, his executors, or administrator, may indorse and negotiate the cheque, and the indorsement should show the capacity in which they sign.

As provided in Section 7 (3) a bill payable to a fictitious or non-existing payee may be treated as being payable to "bearer." In *Bank of England* v. *Vagliano Brothers*, [1891] A.C. 107, it was held that a fictitious or non-existing person included a *real* person who never had nor was intended to have any right to the bills. (See FICTITIOUS PAYEE.)

In Scotland, when the payee is a married woman, cheques are frequently made payable to, e.g. Mrs. Mary Burns or Scott, Burns being the maiden name and Scott the married name. The cheque may be indorsed either "Mary Burns" or "Mary Scott."

Where a cheque is payable to "Wages or order," "Cash or order," or "House Account or order," it is sometimes treated as a cheque payable to the order of the drawer and indorsed by him. Such words as "wages," "cash," etc., cannot be regarded as coming under Section 7 (3), which refers only to a fictitious or non-existing *person*.

In *North & South Insurance Corporation* v. *National Provincial Bank Ltd.* (*The Times* 7th November, 1935), it was held that an instrument drawn payable to "cash or order" was not a cheque, for it merely directed the payment of cash to some impersonal account which could not indorse and the printed words "or order" must give place to the written word "cash." The document was a good direction to pay money to bearer and was not a bill of exchange. In this case the money had got into the hands of the person contemplated by the drawer and the decision must not be taken to mean that a banker gets a good discharge in paying such an instrument if it has got into wrong hands.

(See IMPERSONAL PAYEE.)

Where a cheque is payable to 'John Brown or order," and John Brown himself presents it at the counter for payment, it is the practice of bankers always to require it to be indorsed by Brown before payment can be made. It would appear, however, that, legally, a cheque when presented by the payee is payable to him without indorsement. Sir John Paget says: "The common practice of paying bankers to refuse payment unless the ostensible payee signs on the back of the cheque seems therefore without justification." The custom of always requiring the payee's indorsement on an order cheque should, however, not be departed from except perhaps in some unusual case when the payee insists on payment without indorsement. In such a case a banker might be able to postpone payment until he had communicated with the drawer. It is somewhat difficult to see how a banker could be held liable for refusing payment of a customer's cheque because the payee declined to indorse it in accordance with the custom of bankers. A banker's customer knows that it is the practice to require all cheques payable to order to be indorsed, and if, on receiving back his paid cheques, he found that a cheque which he had drawn payable to "John Brown or order" was not indorsed by John Brown, he might reasonably maintain that the cheque showed no evidence of ever having been in the hands of John Brown, and that he was entitled to have that evidence. In the case of a payee declining to indorse, the banker should demand a receipt for the money; and if £2 or over the receipt should be stamped.

If a cheque payable to, say, the British Baking Company, Ltd., is paid to credit of the manager's or secretary's private account, it should put the banker on inquiry at once, as he may be held liable if the cheque has been misappropriated. If it is necessary for agents, as, for instance, in the case of insurance companies, to place to the credit of their private accounts cheques which are payable to their principals, the banker should be duly authorised in writing by the principals to permit of cheques being dealt with in that way. (See the case of *A. L. Underwood, Ltd.* v. *Bank of Liverpool and Martins, Ltd.*; v. *Barclays Bank, Ltd.*, and other cases under COLLECTING BANKER.)

With regard to a cheque payable to one limited company and paid into credit of another limited company, see the case under COLLECTING BANKER.

Where a cheque is payable to the bank on which it is drawn it is merely a direction to the bank to hold the amount as a trustee for its customers, the drawers, and to await further instructions from the drawers as to the disposal of the amount.

Where a payee's name was altered and the alteration was not authenticated by the initials of both the directors who had drawn the cheque, see the case of *Souchette Ltd.* v. *London County Westminster & Parr's Bank, Ltd.*, under ALTERATIONS.

Where an addition was fraudulently made to the name of the payee of a cheque, after it was drawn, such alteration of the order to pay being facilitated by the leaving of a space after the payee's name, it was held not to be such negligence on the drawer's part as to absolve the banker from liability in paying the cheque in its altered state, although the addition was not apparent. The judge hinted, however, that if the practice of carelessly drawing cheques increased it might be held to be negligence on the drawer's part. (*Slingsby and Others* v. *District Bank, Ltd.*, [1932] 1 K.B. 544.)

In the case of a dividend warrant where several payees are named, it is the custom to pay upon the indorsement of one of them; but an interest warrant should, strictly, be indorsed by all the payees, though this is not always done in practice. (See BILL OF EXCHANGE, CHEQUE, INDORSEMENT.)

PAYING BANKER. It is the duty of a paying banker to pay the cheques of his

customer so long as he has sufficient funds belonging to his customer to enable him to do so. Before paying a cheque, a banker must, of course, examine it to see that it is properly signed, that the indorsements are correct and, generally, that the cheque is in order.

In the case of bills domiciled with a banker it is part of his duty, either from custom or by instructions of his customer, to pay them, though he is otherwise not legally bound to do so as in the case of a cheque. The paying banker is the drawee of a cheque, and therefore a party to it, but he is not a party to a bill which is merely domiciled with him.

If a drawer's or an acceptor's signature is forged, a banker cannot debit his customer's account with the cheque or bill.

With regard to indorsements the position of the paying banker is—

BILL. He cannot debit his customer's account with a bill bearing a forged indorsement. The Bills of Exchange Act does not give him any relief from a forged indorsement on a bill.

CHEQUE. If a banker pays an open cheque in good faith and in the ordinary course of business, he is protected against a forged indorsement by Section 60 of the Bills of Exchange Act, 1882. A banker paying a crossed cheque in good faith and without negligence is protected by Section 80.

Sir John Paget suggests, in his *Law of Banking*, that a cheque which contains a restriction that it is payable only if presented within a specified period may not be included under the term "cheque," as defined by the Bills of Exchange Act.

Cheque payable on condition that a form of receipt is signed. The banker is protected by Section 17 of the Revenue Act, 1883, if paid to the *payee*. It is not considered a transferable document. (See RECEIPT ON CHEQUE.)

Cheque crossed "account payee." The words "account payee" do not concern the paying banker, so long as he pays to a banker in accordance with the crossing. (See ACCOUNT PAYEE.)

Cheque crossed "not negotiable." The words "not negotiable" do not affect the paying banker. The cheque is treated as an ordinary crossed cheque, and the banker is protected accordingly.

Crossed Cheque. The banker is protected by Section 80 of the Bills of Exchange Act (see CROSSED CHEQUE), when he pays a cheque, crossed generally, to a banker, or crossed specially to the banker to whom it is crossed or his agent for collection being a banker.

Cheques paid under advice, when drawn upon another branch of the same bank, or upon another bank. (See PAYMENT OF CHEQUE.)

Cheque drawn in payment of banker's draft. (See the case quoted under BANKER'S DRAFT.)

DRAFTS (which are not cheques). The banker is protected against a forged indorsement on an uncrossed banker's draft by Section 19 of the Stamp Act, 1853. Crossed banker's drafts are protected by the Bills of Exchange Act (1882) Amendment Act, 1932. (See BANKER'S DRAFT, CHEQUE, COLLECTING BANKER, PAYMENT OF CHEQUE.)

PAYING-IN SLIPS. Paying-in slips, or credit vouchers, are the forms which are filled up showing the amount of cupro-nickel, copper, notes, bills, and cheques which are paid in to the credit of a customer's account, Each slip should be signed by the customer, or the person who has prepared it on his behalf. The name of the account should be distinctly stated, and the date should be that of the actual date on which the money is paid in. Any alteration in the date or amount should be duly initialed by the person signing the voucher. It is usual for the cashier receiving the credit to initial the voucher, and sometimes he also initials, or stamps with a rubber stamp, a duplicate slip, or, if a book of credit slips is used by the customer, the counterfoil, as an acknowledgment to the customer that the cash, etc., has been duly received. A cashier's initials upon the counterfoil or duplicate voucher does not in any way mean that the cheques and bills included in it are in order.

Some bankers print upon their paying-in slips a notice that cheques, etc., for collection, though credited to the account when paid in, are not available for drawing against until the proceeds have been received at the branch. (See EFFECTS NOT CLEARED.) Paying-in slips may also contain a notice requesting customers to cross all cheques before paying them in. (See CROSSED CHEQUE.)

Where an official of a company pays in to the credit of the company's account cheques payable to the company, it is not permissible for the official to receive part of the amount back in cash by simply making a deduction on the credit slip. A banker can pay out only when a cheque is drawn upon the account in the authorised way.

Credit slips should be retained by a banker

and not be given up to a customer along with paid cheques.

District auditors may demand the credit slips of a local authority for inspection and return.

PAYMENT BY BILL. Where an unmatured bill is taken in payment of a debt, the debtor cannot be sued for the debt until the bill is due and is dishonoured; that is, the creditor's right to sue for the debt is, by taking the bill, postponed till the maturity of the bill.

Where a bill, indorsed by a debtor to his creditor is dishonoured, the creditor must give the usual notices of dishonour to the drawer and each indorser, otherwise the debtor will be discharged from the debt. (See DISHONOUR OF BILL OF EXCHANGE.)

In the event of the acceptor's bankruptcy, the holder of a bill which is not yet due may prove upon the estate subject to a rebate of interest at the rate of 5 per cent per annum from the time when the dividend is declared to the date when the bill would be due. (Bankruptcy Act, 1914, Schedule 2, Rule 22.)

CHEQUE. When a cheque is taken in settlement of a debt and the cheque is dishonoured, the debt is not discharged, unless the person receiving the cheque did not present it for payment within a reasonable time. The drawer of the cheque, however, remains liable for six years from its date, except to the extent of any actual damage he has suffered due to delay in presentment for payment. (See PRESENTMENT FOR PAYMENT.)

PAYMENT COUNTERMANDED. (See PAYMENT STOPPED.)

PAYMENT FOR HONOUR. When an acceptor fails to pay a bill at maturity, any person may, after the bill has been protested, pay it *supra protest* for the honour of some party to the bill.

The regulations regarding payment for honour *supra protest* are contained in Section 68 of the Bills of Exchange Act, 1882, which is as follows—

"(1) Where a bill has been protested for non-payment, any person may intervene and pay it *supra protest* for the honour of any party liable thereon, or for the honour of the person for whose account the bill is drawn.

"(2) Where two or more persons offer to pay a bill for the honour of different parties, the person whose payment will discharge most parties to the bill shall have the preference.

"(3) Payment for honour *supra protest*, in order to operate as such and not as a mere voluntary payment, must be attested by a notarial act of honour, which may be appended to the protest or form an extension of it.

"(4) The notarial act of honour must be founded on a declaration made by the payer for honour, or his agent in that behalf, declaring his intention to pay the bill for honour, and for whose honour he pays.

"(5) Where a bill has been paid for honour, all parties subsequent to the party for whose honour it is paid are discharged, but the payer for honour is subrogated for, and succeeds to both the rights and duties of, the holder as regards the party for whose honour he pays, and all parties liable to that party.

"(6) The payer for honour on paying to the holder the amount of the bill and the notarial expenses incidental to its dishonour is entitled to receive both the bill itself and the protest. If the holder do not on demand deliver them up he shall be liable to the payer for honour in damages.

"(7) Where the holder of a bill refuses to receive payment *supra protest* he shall lose his right of recourse against any party who would have been discharged by such payment."

The drawer or any indorser may insert on a bill the name of a person to whom the holder may resort on dishonour of the bill by non-acceptance or non-payment. Such person is called a "referee in case of need," and, if so disposed, will accept or pay the bill for the honour of the drawer or indorser as the case may be. (Section 15, Bills of Exchange Act, 1882.) (See ACCEPTANCE FOR HONOUR, BILL OF EXCHANGE.)

PAYMENT, MISTAKES IN. (See PAYMENT UNDER MISTAKE OF FACT.)

PAYMENT OF BILL. A bill of exchange is, in the usual course of events, paid by the acceptor, and when so paid it is discharged and the bill delivered up to him. The Bills of Exchange Act, 1882, provides—

"Section 59. (1) A bill is discharged by payment in due course by or on behalf of the drawee or acceptor. 'Payment in due course' means payment made at or after the

maturity of the bill to the holder thereof in good faith and without notice that his title to the bill is defective.

"(2) Subject to the provisions hereinafter contained, when a bill is paid by the drawer or an indorser it is not discharged; but

"(*a*) Where a bill payable to, or to the order of, a third party is paid by the drawer, the drawer may enforce payment thereof against the acceptor, but may not re-issue the bill.

"(*b*) Where a bill is paid by an indorser, or where a bill payable to drawer's order is paid by the drawer, the party paying it is remitted to his former rights as regards the acceptor or antecedent parties, and he may, if he thinks fit, strike out his own and subsequent indorsements, and again negotiate the bill.

"(3) Where an accommodation bill is paid in due course by the party accommodated the bill is discharged."

In *Auchteroni & Co.* v. *Midland Bank, Ltd.*, [1928] K.B. 44 T.L.R. 441, the plaintiffs drew a bill payable to themselves on the N. P. Company, who accepted the bill and gave their bankers, the defendants, instructions to pay it at maturity. When the bill became due, the plaintiffs handed it to their cashier to take it to their own bank and have it collected, but the cashier, instead of carrying out his duty, went to the defendant bank and obtained payment for it over the counter and absconded with the money. The plaintiffs had indorsed the bill in blank before handing it to their cashier. The defendants held that, as the bill was a negotiable instrument, they were protected by Section 59. The plaintiffs held that Section 59 could not protect the defendants because the circumstances of the payment were so unusual that the defendants could not say that they had made the payment without notice of irregularity. Wright, J., in the course of his judgment, said: "Was the demand for payment over the counter in this case so unusual that the defendants' suspicions ought to have been aroused? The evidence showed that though such a course was unusual, it was not unknown. If the contention of the plaintiffs was right, no banker could ever safely pay a bill over the counter without first making inquiries. If there were special circumstances as, for instance, if a bill for a large sum was presented by a tramp or by an office boy, the bank might properly wait to make inquiries, but if it did so in other cases it risked dishonouring the bill under Section 47 and committing a breach of its duty to its customer, the acceptor. The plaintiffs had entrusted the *indicia* of title to their servant and he had defrauded them, but for that the defendants were not responsible."

"Section 61. When the acceptor of a bill is or becomes the holder of it at or after its maturity, in his own right, the bill is discharged."

"Section 62. (1) When the holder of a bill at or after its maturity absolutely and unconditionally renounces his rights against the acceptor the bill is discharged.

"The renunciation must be in writing, unless the bill is delivered up to the acceptor.

"(2) The liabilities of any party to a bill may in like manner be renounced by the holder before, at, or after its maturity; but nothing in this Section shall affect the rights of a holder in due course without notice of the renunciation."

If an acceptor pays the amount of a bill before it arrives at maturity, he may, should he wish to do so, re-issue the bill, because, being paid before it is due, it is not discharged. If he does not wish to re-issue the bill, he should cancel or destroy it, for if, by any means, the bill should come into the hands of a holder in due course, before it matures, that holder will have a right of action against the acceptor and all other parties to the bill.

When a bill payable on demand is paid, it is discharged and cannot be re-issued; and when a bill payable after date is paid at or after maturity it also is discharged and cannot be re-issued.

No right of action can be maintained on a discharged bill, though the right to sue upon the consideration may still continue.

If an acceptor pays only a part of the amount of a bill at maturity, the part payment is a discharge to that extent, and the banker should place a receipt for the amount paid upon the back of the bill and qualify the receipt by adding that the part payment is accepted by him without prejudice to the rights of any of the other parties to the bill.

Notice of the part payment should be given to the other parties. The bill itself is not, of course, given up against a part payment. The bill should be noted for the unpaid balance.

In the case of part payment of a foreign bill, the bill must be protested for the balance.

A bill should not, as a rule, be given up to an acceptor when, on presenting the bill to him for payment, he offers anything except cash or notes. If a cheque, which can be collected the same day, is offered, the bill should be retained until cash has been received for the cheque, or the bill may be pinned to the cheque so that the drawer can obtain it from his bankers when the cheque has been paid; but a cheque which cannot be cashed the same day should not be taken. It is necessary to bear in mind that if a cheque is taken in payment of a bill and the cheque is subsequently returned unpaid, the banker will have lost recourse against the various parties to the bill and will have only the acceptor to look to for the money. London bankers accept cheques upon clearing bankers in payment of bills, the cheques being attached to the bills and passed at once through the Clearing House.

If a bill drawn on John Brown, Leeds, payable at sight, contains a note on the bill that it is "payable in London," and John Brown wishes to pay the bill in Leeds when presented to him, he must bear any cost there may be in transmitting the money to London as the holder of the bill is entitled to have the full amount paid in London.

Where a bill indorsed to the holder by the bank at which the acceptor had made it payable, was paid by the bank at maturity and dishonoured on the following day it was held (in *Pollard* v. *Ogden* (1853), 2 E. & B. 459), that the bank had paid the bill in their capacity as indorsers, and that they reserved to themselves the right to examine into the state of the acceptor's accounts and determine whether they would honour the bill or not. Mr. Justice Erle said: "I think it is clear law that the holder of a bill indorsed to him by a bank at which the acceptor has made it payable may, if the bank choose to dishonour the bill, receive payment forthwith from the bankers in their capacity as indorsers. . . . The bank might have said to the holder 'we require a reasonable time to examine into the state of the accounts between us and the acceptor before we either honour or dishonour this bill; but in case we determine to dishonour it we shall be liable to you as indorsers; therefore, to save trouble, take your money; if we honour the bill you are paid; if not, we are taking it up as indorsers of a dishonoured bill.'"

A banker may, as is the custom with London bankers, debit a bill to an acceptor's account, when payable at that banker's, without requiring any advice from the acceptor, the acceptance being a sufficient authority, but in practice, country bankers usually require an advice. Country bankers often receive from an acceptor periodically a list of his bills falling due and an order to pay them, The customer's signature on an advice should not be cancelled.

A banker is not obliged to pay a bill after his usual hours of business.

Before paying a bill the banker should see that it is in order in all respects. He must be satisfied that it bears the acceptor's signature. He should verify the due date and see that the stamp is correct. (See remarks under PAYMENT OF CHEQUE.)

A banker does not get a good discharge in paying bills (other than cheques) where there is a forged indorsement, for he has not paid the holder as required by Section 59 and hence has not paid the bill in due course, being consequently liable to his customer, the acceptor. In the case of cheques, statutory protection against this liability is given by Section 60. (See PAYMENT OF CHEQUE.)

In *Bank of England* v. *Vagliano Brothers*, [1891] A.C. 107, Lord Macnaghten said: "In paying their customers' acceptances in the usual way bankers incur a risk perfectly understood, and in practice disregarded. Bankers have no recourse against their customers if they pay on a genuine bill to a person appearing to be the holder, but claiming through or under a forged indorsement. The bill is not discharged; the acceptor remains liable; the banker has simply thrown his money away." (See FORGERY.)

When a promissory note is made payable at a bank, the banker is liable if he pays it in the event of a forged indorsement.

If the acceptor fails to pay a trade bill at maturity and an indorser or the drawer pays it, the bill is not discharged by such payment, and the drawer can sue the acceptor for the amount plus expenses and interest, and the indorser can sue the acceptor or any prior parties.

But if a bill is an accommodation bill and is not met by the acceptor when due, it is, if paid by the drawer or indorser, discharged, when the party paying it is the person for whose accommodation the bill was drawn or accepted.

If an acceptor or any other person pays to a banker an amount for the special purpose of providing for a bill falling due, that amount is earmarked for that purpose and cannot be used by the banker for any other purpose, such as to reduce an overdraft which the acceptor may have.

Where a person accepts a bill payable at a bank where he has no account, the banker is under no obligation to receive money from the acceptor with which to pay the bill.

Where a bill is intentionally cancelled by the holder or his agent, and the cancellation is apparent thereon, the bill is discharged.

It is not necessary, on payment of a bill by the acceptor, to give a receipt for the money, as the delivering up of the bill to the acceptor is sufficient to cancel his liability upon it, but if, as is sometimes done, a receipt is indorsed upon the bill by the holder, the receipt (except in the case of a banker) requires to be stamped 2d. in the same way as an ordinary receipt.

Where the holder of a bill is bankrupt, payment of the bill requires to be made to the trustee and not to the bankrupt.

Where the holder is dead, payment must be made to the executor or administrator.

If, instead of payment, a holder accepts a fresh bill from the acceptor, the drawer and indorsers of the old bill will be discharged, unless they are parties to the new bill.

When a banker is employed to collect a bill, he should not, unless under instructions from his correspondent, accept payment subject to any conditions, otherwise he may render himself liable for the amount of the bill.

With respect to a bill paid under rebate, see DOCUMENTARY BILL.

If a banker wrongly dishonours an acceptance of his customer he will be liable in damages. (See DISHONOUR OF BILL OF EXCHANGE.) He should, therefore, be careful to see that everything has been credited to the account and that the balance is correctly stated, before returning a bill.

If a banker pays a bill across the counter, and, as soon as he has done so, finds that he should not have paid it, he cannot compel the person to whom he paid the money to return it, though if a mistake is made by handing too much money to the customer the mistake may be rectified. (See BILL OF EXCHANGE, CANCELLATION OF BILL OF EXCHANGE, OVERDUE BILL, PAYMENT FOR HONOUR, PAYMENT OF CHEQUE, PRESENTMENT FOR PAYMENT, TIME OF PAYMENT OF BILL.)

PAYMENT OF CHEQUE. When an open cheque is presented for payment it requires to be carefully scrutinised to see that everything is in order. If the account upon which the cheque is drawn will admit of its payment, the banker, before paying it, must be satisfied that it bears the signature of his customer, or of the person who may have been authorised by his customer to sign, and that payment of the cheque has not been stopped by the drawer. If it is a cheque payable to order, all the indorsements must be scanned to see that they are apparently correct. It should also be noticed whether the cheque is post-dated or is stale dated, whether the amount in writing agrees with the amount in figures, and whether, if any alteration has been made in the cheque, such alteration is duly initialed by the drawer or drawers. On being satisfied that all these various points are in order, and that there is no other reason why the cheque should not be paid, the banker may, if the person presenting the cheque appears, so far as he can tell, to be entitled to it, pay the cheque.

If a cheque has been marked for payment it must be taken into account in ascertaining the balance, as the banker must pay that cheque.

If a banker dishonours a cheque which ought to be paid he will be liable in damages.

In *London Joint Stock Bank, Ltd.* v. *Macmillan and Arthur*, [1918] A.C. 777, Lord Shaw said: "If the cheque do not contain on its face any reasonable occasion for suspicion as to the wording and figuring of its contents, the banker, under the contract of mandate which exists between him and his customer, is bound to pay. He dare not, without liability at law, fail in this obligation, and the consequences to both parties of the dishonour of a duly signed and *ex facie* valid cheque are serious and obvious. In the second place, if there be on the face of the cheque any reasonable ground for suspecting that it has been tampered with, then that, in the usual case, is met by the marking 'refer to drawer,' and by a delay in payment, until that reference clears away the doubt. Always granted that the doubt was reasonable, the refusal to pay is warranted." In practice, however, a banker would refer such a cheque marked with some other form of answer than the

words "refer to drawer," as those words are commonly used when returning a cheque for lack of funds.

When paying a crossed cheque to another banker practically the same points require to be observed and, in addition, the nature of the crossing. (See CROSSED CHEQUE.)

When a cheque is presented for payment, a banker is required either to pay it or dishonour it. If everything is in order he is obliged to pay it, or stand the consequences of wrongly refusing to pay.

It is possible for everything connected with a cheque to be absolutely correct and yet the cashier who has to pay it may have a strong suspicion that the person presenting it is not entitled to it. Lord Halsbury in *Vaghiano Bros.* v. *Bank of England*, [1891] A.C. 107, said: "I can well imagine that on a person presenting himself, whose appearance and demeanour was calculated to raise a suspicion that he was not likely to be entrusted with a valuable document for which he was to receive payment in cash, I should think it would be extremely probable that, whether the document were a cheque payable to bearer for a large amount, or a bill, the counter clerk and banker alike would hesitate very much before making payment."

An open cheque payable to a company, purporting to bear any necessary indorsement, can safely be paid to a stranger without inquiry, unless any suspicious circumstances were present that would amount to notice of defective title.

When a cheque has a notice upon it that it must be presented for payment within a certain fixed time from the date of the cheque, the banker must see that the time has not expired before paying the cheque.

Where a customer has two accounts with the same bank, one at Branch A and another at Branch B, and both are credit accounts, the banker at Branch A, when a cheque drawn upon his Branch is presented, is not obliged to take into consideration a balance at any other Branch than his own. If, however, the account at Branch B is overdrawn and at Branch A is in credit, a banker may, if necessary, regard them as one account. (See SET-OFF.)

The drawer of a crossed cheque is not entitled to a longer time to provide for it than in the case of an open cheque. A crossed cheque received from another bank by post or through the local exchange or by special presentation, may be dishonoured forthwith if there are no funds and need not be held until the close of business to see if it is provided for or if the drawer desires to stop it.

A banker at Branch A is not obliged, before dishonouring a cheque to ascertain, by wire or otherwise, if the customer has paid in at Branch B on that day for his credit at A, even though the customer is in the habit of paying in at B.

It is very necessary, before paying a cheque, that the banker should be fully satisfied that it ought to be paid, because, as soon as he hands the money across the counter, the ownership in that money passes from the banker to the person presenting the cheque, and, unless the presenter is willing to repay, the banker cannot obtain it back, even if he discovers immediately that the money should not have been handed over. Chief Justice Erle in *Chambers* v. *Miller* (1862), 13 C.B.N.S. 125 said: "The bankers' clerk chose to pay the cheque; and the moment the person presenting the cheque put his hand upon the money it became irrevocably his."

Where a banker has given his agent orders to pay certain cheques, or cheques up to a fixed amount, on behalf of a customer, the cheques, when paid, are debited to the customer's account on the day they are received by the banker, but the interest on the account is reckoned as though the cheques had been debited on the actual date when they were paid by the banker's agent. (See STANDING CREDITS.)

When a branch pays, under advice, a cheque drawn upon another branch of the same bank, in the opinion of Mr. George Wallace, K.C. (see *Q.B.P.*, 8th Edition, No. 488), payment at the substituted branch is a payment by the bank on which the cheque is drawn, and the bank obtains the protection of Section 60 of the Bills of Exchange Act, 1882. Mr. Wallace considers that there is sufficient evidence of the practice to satisfy any Court that it has now come to be part of the ordinary course of business of bankers. If, however, a bank pays, under advice, a cheque drawn upon another bank, the advised bank does not obtain any statutory protection. If the indorsement is regular the advised bank becomes a holder for value, but if forged or unauthorised the bank may incur liability for conversion. It is considered that banks should take from their customers a signed form of request for another bank to cash their cheques with a sufficient indemnity. (See BRANCHES.)

Where a cheque for, say, £20 is presented for payment and the drawer has only £19 to credit, and the banker refuses payment, the presenter should not be told how much is short in order to enable him to pay in the pound and thus obtain payment. But if the presenter ascertains the amount from some other source, the banker cannot refuse to accept the sum for his customer's credit, even if paid in by the person who immediately thereafter presents the cheque for £20.

When a banker learns that a customer is dead, or has become insane, or he receives notice of the presentation of a bankruptcy petition, or ascertains that a receiving order has been made, he must not pay any further cheques on the account, but return them to the presenter with an answer written upon them "Drawer deceased," "Drawer bankrupt," etc.

After commission of an act of bankruptcy, cheques should only be paid to the drawer or his assignee, and cheques payable to third parties should be dishonoured. (See ACT OF BANKRUPTCY.)

As to payments to undischarged bankrupts see under BANKRUPT PERSON.

Where a banker has been served with a garnishee order, see GARNISHEE ORDER.

In cases where a cheque has a bill attached, if the cheque specifically refers to the bill, the banker must see that the bill, as well as the cheque, is in order; but if the cheque does not allude to the bill the cheque must be dealt with, without regard to the bill.

Cheques must be paid in the order in which they are presented. A cheque which arrives in the morning's Clearing must be paid, if the account will admit of it, and must not be dishonoured in order to admit of a cheque presented across the counter later in the day being paid.

If a cheque is dishonoured because of insufficient funds, a cheque presented subsequently should be paid if the funds are sufficient for it.

Where several cheques arrive in the Clearing and the account will not admit of payment of them all, a banker usually pays as many of them as he can and returns the rest. Nevertheless, as all the cheques form one presentment, it is probable that the banker might not be wrong in considering merely the total of the amounts, and not the individual amounts, and returning all the cheques if the total amount was in excess of the balance.

A cheque does not operate as an assignment of the drawer's funds in the hands of the drawee, but in Scotland it is otherwise. (See Section 53, Bills of Exchange Act, 1882, under DRAWEE.)

Before returning a cheque a banker should make certain that everything has been credited to the account and that the balance is stated correctly, for if he wrongfully dishonours a cheque of his customer he will be liable in damages. Bank charges should not be debited to an account at an unusual time unless by agreement with the customer. (See DISHONOUR OF BILL OF EXCHANGE.)

With respect to cheques which a customer has paid in, but which the banker has not yet cleared, it forms a matter of arrangement between the banker and the customer as to whether, or not, they are to be considered as definitely placed to the customer's credit and so available as funds in hand wherewith to meet any of the customer's own cheques which may be presented, and it is very advisable to have a definite understanding on the point. Subject to whatever arrangement has been made between himself and his customer, the banker will either pay such cheques or return them unpaid with answer marked thereon "Effects not cleared." Some banks have a notice printed in the pass books that uncleared cheques cannot be drawn against. (See EFFECTS NOT CLEARED.)

A banker who, in good faith and in the ordinary course of business, pays a cheque drawn on himself, is protected by Section 60 of the Bills of Exchange Act, 1882, if an endorsement proves to have been forged or made without authority. A banker who pays a crossed cheque, in accordance with Section 80, is protected against a forged indorsement. (See that Section under CROSSED CHEQUE.)

A banker is not obliged to pay a cheque out of bank hours. If he does so, he loses the protection of Section 60, and runs the risk of paying a cheque, payment of which may be "stopped" by the drawer as soon as the bank doors are opened for business.

As to a cheque presented through the post by a stranger, see under PRESENTMENT FOR PAYMENT. It is, of course, in order for a customer to send a cheque by post in order that cash may be remitted to him.

Cheques received through the Clearing must be paid or dishonoured on the day of receipt; cheques paid to credit which are drawn upon the same branch may be returned unpaid on the following day, but in practice all cheques are either paid or dishonoured on

the day they are received. (See DISHONOUR OF BILL OF EXCHANGE.)

Where a cheque was paid in at the same branch upon which it was drawn for the credit of the account of an employee of the drawer and payable to a third party, it was held that it was paid in the ordinary course of business notwithstanding that negligence was present. Nevertheless the bank in its other function as collecting agent was liable for conversion on the grounds of such negligence. (*Worshipful Company of Carpenters* v. *British Mutual Banking Co.*, [1937] 3 All E.R. 811.)

When a banker is requested by wire to state if a certain cheque will be paid when presented, a guarded reply such as that recommended by the Institute of Bankers, "Would pay if in our hands and in order," should be given. A reply such as "Yes, if in order," would render the banker liable if, before the cheque is actually presented, the customer's balance is altered so as not to admit of its payment, or if the cheque is "stopped" by the drawer, or if the balance is legally attached. (See ADVISE FATE.)

By Section 75 of Bills of Exchange Act, 1882—

"The duty and authority of a banker to pay a cheque drawn on him by his customer are determined by—

"(1) Countermand of payment;

"(2) Notice of the customer's death."

It is desirable that a countermand of payment of a cheque should be in writing and be signed by the drawer, and if the countermand is subsequently cancelled it also should be in writing.

(See PAYMENT STOPPED.)

PAYMENT STOPPED. A customer has the right to give notice to his banker to stop payment of a cheque which he has issued. The notice should be in writing, give accurate particulars of the cheque and be signed by the drawer.

If a banker pays a cheque after a "stop order" has been received, he will be liable for so doing. It is necessary, therefore, to warn each branch where the cheque may be presented of the notice which has been received. A notice should be placed in the customer's account in the ledger, so that anyone referring to the account may at once observe particulars of the "stop." To prevent the notice being overlooked, it is a good plan to insert in the ledger a red-coloured slip, with the word "stop" printed in large letters, giving particulars of the stopped cheque. A list of all orders to stop payment should be kept in some convenient form for ready reference by those officials who are concerned with the payment of cheques.

In *London Provincial and South-Western Bank, Ltd.* v. *Frank Buszard* (1918), 35 T.L.R. 142, Lawrence, J., held that notice of the stopping of a cheque at one branch of a bank was not notice to the other branches. He said that it appeared from *Clode* v. *Bayley* (1843), 12 M. and W. 231 that there was a right to a separate notice of dishonour as between the different branches of a bank.

The drawer of a cheque is the only person who can "stop payment" of it, but bankers often receive notice from the payee of a cheque that it has been lost or stolen. Where notice is received from a payee, he should be requested to inform the drawer at once so that the latter may instruct the banker to stop payment. If the cheque is presented before such instructions are to hand, a banker will exercise great discretion before honouring it.

If the cheque which is lost is signed by several persons, a notice from one of them, e.g. one executor, one trustee, a secretary, etc., is usually acted upon by a banker. Where the account is in several names and the lost cheque is signed only by, say, one of the account holders, or by one partner, a notice from any of the other holders or partners is sufficient authority to a banker to justify him in stopping payment of the cheque.

When the drawer wishes to cancel his order to stop payment, it should be done in writing and be signed by him.

When a drawer wishes to stop payment of a cheque, he is entitled to do so during the usual business hours, and if a banker pays a cheque before the commencement of business, or after the doors are closed, he incurs the risk of paying a cheque which may be "stopped" as soon as the drawer has the opportunity.

When an order to stop payment is received at the moment the cheque is presented and before the banker has paid over the money, the cheque should not be paid.

In the case of a cheque received through the Clearing, the drawer has the right to stop payment of it up till the close of business, as the banker has that time in which to decide whether to pay or return a cheque. If the cheque has been cancelled, before the countermand of payment, it may be marked "cancelled in error."

An order to a banker to pay money is

revocable until something definite has been done by the banker binding him to the person to be benefited, as by crediting him or admitting that he holds the money to his use. (Paget's *Law of Banking*.)

Where payment of a cheque is countermanded by telephone or telegram, the written confirmation of the drawer should be obtained without delay. In *Hilton* v. *Westminster Bank Ltd.* (1927), 43 T.L.R. 124, a drawer stopped payment of a cheque by telegram, quoting the number as 117283 and later confirmed this by telephone. A cheque was later presented and paid for the same amount and identical in detail except the number was 117285. It transpired that this was in fact the cheque the drawer intended to stop, its number having been wrongly quoted. The drawer sued the bank for having paid contrary to instructions, contending that the bank was not entitled to assume that the cheque that was paid was a duplicate of the stopped cheque, especially as an examination of the drawer's paid cheques would have shown that the cheque bearing the number given in mistake by the drawer had already been paid and did not correspond with the stopped cheque. It was held in the House of Lords that the bank was entitled to assume that the cheque actually paid was a duplicate cheque as there could be only one cheque bearing a printed number, whilst there might be many cheques in favour of the same payee and for the same amount.

In *Curtice* v. *London City & Midland Bank*, [1908] 1 K.B. 293, a telegram from a drawer stopping payment of a cheque was delivered after hours in the bank letter-box and overlooked the next morning when the box was cleared. Before it was discovered the cheque was presented and paid. The Appeal Court held that the cheque was not in fact stopped, as notification of the countermand did not actually come to the bank's notice and there could be no constructive countermand of payment. A verdict was given for the bank but the Court suggested that there might have been a ground of action for negligence in respect of the careless clearing of the letter-box.

Pending confirmation of a countermand by telegram or telephone, a bank should not refuse payment but postpone it pending corroboration. Any answer put on a cheque in these circumstances should make this clear.

If, exceptionally, a banker has accepted a cheque in the same manner as a drawee might accept a bill of exchange, or if, in answer to a telegram from another bank, he unqualifiedly replies that the cheque will be paid, he must pay the cheque when presented. But if, in the meantime, the drawer has stopped payment of it, the banker cannot charge it to the drawer's account. (See further information under MARKED CHEQUE.)

Although a drawer has the right to stop payment of a cheque drawn by him, yet if the payee has negotiated the cheque, any subsequent *bona fide* holder for value can sue the drawer, provided that the cheque was not crossed "not negotiable." (See COUNTERMAND OF PAYMENT, LOST BILL OF EXCHANGE.)

When returning a cheque, payment of which has been countermanded by the drawer, the answer to be written on the cheque should be "payment countermanded by the drawer," or "orders not to pay." The answer "payment stopped" should not be used, as it might be interpreted to mean that the drawer had stopped payment of his debts.

PAYMENT STOPPED (NOTES). A banker cannot refuse payment of his own notes. A holder for value without notice that the note has been lost or stolen may compel the banker to pay it, but where a note is presented, payment of which has been stopped, a banker should exercise the utmost care and make full inquiries before cashing it.

The Bank of England makes a charge of 2s. 6d. for registering a notice to "stop" payment of a note. This does not mean that the note will not be paid, but that inquiries will be made of the presenter.

PAYMENTS UNDER ADVICE. (See PAYMENT OF CHEQUE, STANDING CREDITS.)

PAYMENTS UNDER MISTAKE OF FACT. Money paid away under mistake of fact can, in certain circumstances, be recovered. The mistake must be one of fact, not of law. Assuming that the receiver of the money took it in good faith—without which he would not be allowed to keep it—it is a general, though not an absolute, rule that he cannot be made to refund where he has changed his position and it would accordingly be prejudicial to him to repay. Money paid on a negotiable instrument can probably not be recovered. Paget (*Law of Banking*, 4th Edition, p. 402) on *Jones* v. *Waring & Gillow*, [1926] A.C. 670, says: "Money paid to a man as principal, not agent, under mistake of fact can be recovered against him, although he has detrimentally altered his position, if he did so merely in consequence of the payment and not in reliance on some independent act or representation of the payer's or by some breach

of duty on the payer's part, or unless the mistake of fact directly touches a negotiable instrument by virtue of which he received the money, and his position has been or might have been prejudiced in the interval between payment and reclamation."

The conditions governing recovery are—

(*a*) The mistake must be between the payer and receiver. (*Chambers* v. *Miller* (1862), 13 C.B.N.S. 125.)

The payer must be under mistake as between himself and the receiver. It is not sufficient, for example, for the payer to be labouring under a mistake of fact relative to a third party—a banker paying a cheque in the belief that the drawer was alive, when he was in fact dead, would not be entitled to recover from the payee.

(*b*) That the money has not been paid to an agent who has paid over to his principal.

The position depends on whether the agent has paid his principal. In *Kleinwort Sons & Co.* v. *Dunlop Rubber Company Ltd.* (1907), 23 T.L.R. 696, the defendants paid the plaintiffs in error, and it was held that the money could be recovered as the plaintiffs had not changed their position—they had made further advances to the customers for whom the payment was received, but the Court held that they would have made such advances in any event and were not induced to do so by the payment in question. *Kerrison* v. *Glyn, Mills & Co.* (1911), 28 T.L.R. 106 was on similar lines, the plaintiff having paid the defendants for a purpose which had failed. The defendants were not allowed to argue that, having credited their clients, they could not refund. The case of *Admiralty Commissioners* v. *National Provincial Bank, Ltd.* (1922), 38 T.L.R. 492 decided against the bank's argument that money admittedly paid to it in the belief that the intended payee was alive, when he was dead, could not be repaid without the consent of the deceased's personal representatives. *Gower* v. *Lloyds & National Provincial Foreign Bank, Ltd.*, [1938] All E.R., decided that where a bank received money under mistake of fact and paid over to a principal, the fact that it was under a misapprehension as to the identity of the principal did not deprive it of its defence that it had altered its position, the money being irrecoverable from the persons to whom it had in error been paid away.

(*c*) That the money has not been paid to a principal who would suffer if forced to repay. —

He must, however, have been induced to change his position by some representation on the part of the payer (*vide* Lord Cave in *Jones* v. *Waring & Gillow* (*supra*)), and not merely as a consequence of the payment.

(*d*) That the money has not been paid on a negotiable instrument.

Money paid on a negotiable instrument can be recovered where the mistake is one as to the instrument itself, not to anything extraneous to it. Payment of a cheque over the counter cannot be recovered where the payer discovers that he has made a mistake in regard to the position of the account, provided the receiver took in good faith. (*London & River Plate Bank* v. *Bank of Liverpool*, [1896] 1 Q.B. 7.) If, however, the instrument was a forgery, it might be that the money could be recovered, though Sir John Paget rather doubts if this is so. There would usually be an indorsement bringing the instrument within the general rule, and if there were not, as in the case of a bearer bill on which the drawer's signature was forged, the payee would probably not be worth proceeding against.

The holder of a bill has the right to know immediately on presentation whether it will be paid or not (*London & River Plate* case, *supra*), this, in the words of Sir John Paget, being an element essential to the negotiability of the instrument and imperatively demanded by the exigencies of business.

In *Imperial Bank of Canada* v. *Bank of Hamilton*, [1903] A.C. 49, it was suggested that the test was the loss of opportunity of giving notice of dishonour, but, as Sir John Paget says, it is hard to conceive any case of payment by mistake when such opportunity would be lost.

PAYMENTS UPON APPLICATION. (See APPLICATION PAYMENTS.)

PENNY. A silver penny is now issued only as Maundy money (*q.v.*). Its standard weight is 7·27272 grains troy.

At one time silver pennies were frequently cut into halves and quarters to act as half-pence and farthings.

A bronze penny is a mixed metal of copper, tin, and zinc. Its standard weight is 145·83333 grains troy. The bronze coinage was first issued in 1860.

Three new pennies weigh exactly one ounce avoirdupois, and are useful as a substitute for a lost letter weight. (See COINAGE.)

PEPPERCORN-RENT. A peppercorn-rent —that is, a purely nominal rent—is occasionally to be found mentioned in certain deeds. In some cases the peppercorn is

actually handed over and duly recorded as having been paid.

PER CAPITA. (See PER STIRPES.)

PER PRO. (Latin *per procurationem.*) Where an agent signs per pro. or p.p., it means that he holds an authority to sign on behalf of his principal. The Bills of Exchange Act, 1882, Section 25, provides as follows: "A signature by procuration operates as notice that the agent has but a limited authority to sign, and the principal is only bound by such signature if the agent in so signing was acting within the actual limits of his authority." An agent is not personally liable if he signs for or on behalf of his principal, but the mere addition to his signature of words describing him as an agent does not exempt him from personal liability.

The usual form of a "per pro" signature is—

per pro. John Brown,
J. Jones.

or p.p. John Brown,
J. Jones.

In Scotland, the agent's name often comes first and the principal's last, as—

J. Jones per pro John Brown.

This form is also frequently used by English solicitors.

A banker is protected by Section 60 in paying a cheque with a per pro. indorsement in the event of its being unauthorised. If the banker on whom the cheque is drawn pays it in good faith and in the ordinary course of business, it is not incumbent on the banker to show that the indorsement was made by or under the authority of the person whose indorsement it purports to be, and the banker is deemed to have paid the cheque in due course, although such indorsement is made without authority.

It is the custom amongst bankers to accept per pro. indorsements, and they are justified in doing so both by that Section and the result of the case *Charles* v. *Blackwell* (1877), 2 C.P.D. 151, where it was decided that a banker is not liable if he pays a cheque payable to order which is indorsed per pro., even when the person signing had not the authority of the principal.

But if a banker has reason to suspect the authority of the person so signing, he is, no doubt, entitled to ask for evidence of his authority.

An agent may have authority to indorse cheques per pro. and to place them to the credit of his principal's account, but he may not have power to take cash for cheques so indorsed, or credit them to his own account. A person may have a general power to draw cheques per pro., or to draw only to a limited extent, though he may not be authorised to accept bills drawn upon his principal. It is, therefore, necessary, not only to be satisfied that an agent has authority to draw cheques per pro., but to know the precise extent and limitations of his authority. (See MANDATE.)

Some bankers consider that a signature by procuration should include the words per pro. or words having the same meaning, but Sir John Paget states that "whenever a signature shows by its form that it is put on by someone as deputy for another that signature must be treated as a per pro. signature, and puts anyone dealing with the bill on inquiry as to the authority of the person who so utilises the signature."

See the case of *A. Stewart & Son of Dundee, Ltd.* v. *Westminster Bank Ltd.*, under AGENT, where Rowlatt, J., expressed the opinion that the expression "by procuration" in Section 25 of the Bills of Exchange Act, 1882, must be understood as limited to agency on behalf of a natural person and not as extending to a signature on behalf of a company which cannot sign by itself.

It is very desirable that a company's signature should be preceded by the words "per pro.," "for," or "for and on behalf of." (See the cases of *Landes* v. *Marcus and Davids* under AGENT, and *Elliott* v. *Bax-Ironside* under INDORSEMENT, which show the danger of omitting the prefix.)

In entering into a contract with anyone purporting to act on behalf of a limited liability company it is essential to ascertain that the official has the requisite authority. (See cases under COMPANIES.)

It is not impossible for a marksman to have power to sign per pro., but it makes an awkward arrangement, and such a signature should usually be confirmed.

A firm may have power to sign for a private individual, as

per pro. John Brown
J. Jones & Co.

A person who has power to sign by procuration has not, as a rule, any power to delegate his authority to another.

"Per pro" signatures are not accepted upon dividend warrants, or interest warrants. Cheques which require a form of

receipt to be signed by the payee have sometimes a note upon them to the effect that a "per pro" discharge will be accepted if guaranteed by the payee's bankers, and that in the case of a company the receipt must be signed on its behalf by an authorised officer whose position must be stated.

An indorsement "For J. Brown & Co., Ltd., J. Jones, Secretary," "For John Brown, J. Jones, Agent," is often accepted as sufficient. The person signing should state in what capacity he signs.

Where the forms "for," "pro," or "per" are used it is the practice of bankers to require the agent to state his designation or official position, which should be of such a character to imply a *prima facie* authority to indorse. Where the forms "per pro." or "p.p." are used, the express authority indicated is sufficient to justify the banker in accepting the indorsement without the official capacity being stated. Nevertheless, if the capacity is stated, it must not be incompatible with the holding of a procuration. A banker is always entitled to ask for confirmation of any indorsement about which he has any doubt.

As to the stamp duty on a deed of procuration, see PROCURATION.

In *Morison* v. *London County and Westminster Bank, Ltd.* (1913), 108 L.T. 379, where the plaintiff had given the National Provincial Bank an authority to honour all cheques on his account drawn by H. Abbott, "per pro," and Abbott in fraud of the plaintiff drew certain cheques payable to himself and paid them into his private account with the defendants, the cheques, with the exception of two, being specially crossed "London County and Westminster Bank," Coleridge, J., decided that where a banker received a cheque signed per pro. he was guilty of negligence unless he inquired whether the person from whom he took it was acting within the scope of his authority. This decision was reversed by the Court of Appeal, [1914] 3 K.B. 356. In the course of his judgment, the Lord Chief Justice said—

"The defendants set up a defence based upon the protection afforded by Section 82 of the Bills of Exchange Act, 1882, to bankers who collect payment of cheques for their customers if the bankers have acted in good faith and without negligence. The defendant's good faith is not questioned, but it is contended that they did not act without negligence. Mr. Justice Coleridge, being of opinion that Section 25 of the Bills of Exchange Act, 1882, must be read with Section 82, came to the conclusion that the defendants were put upon inquiry by the mere fact that the cheques bore a signature per procuration, and that as the defendants failed to make inquiry they cannot be held to have acted without negligence. I do not agree with this view of the effect of Section 25. Section 82 only comes into operation when a banker receives payment of the proceeds for his customer, and therefore when the cheque has been honoured.

"The effect of Section 25 is that, notwithstanding the negotiable character of the instrument and the obligations upon the signatory to such an instrument to holders, and more particularly to a holder in due course and notwithstanding the authority given by the principal to the agent to sign negotiable instruments per procuration so as to bind the principal, the principal is not liable upon the instrument, even to a holder in due course, if the agent in so signing the cheque has exceeded the actual limits of his authority. The principal in such circumstances and before the instrument is honoured could refuse to pay the cheque or bill upon presentation, and would have a good defence to a claim, even when made by a holder in due course, upon the cheque or bill.

"I agree with Mr. Justice Coleridge that this Section is declaratory of the common law; but it does not, in my judgment, extend beyond it or alter it. When a bill so signed in excess of authority has been honoured, Section 25 does not confer a right to recover the proceeds. If such a right exists in the particular case, it must be found elsewhere. Nevertheless, the fact that the signature to the cheques is made per procuration and is not the signature of the principal is not to be entirely disregarded. In my opinion, when considering whether the bank has acted without negligence, it is to be borne in mind with other facts and circumstances. It is also to be observed that Mr. Justice Coleridge did not rely exclusively upon his view of Section 25 as bearing upon Section 82, for in a later part of his judgment he refers to the payment in of these cheques by the agent to his private account at another bank as another circumstance which should have caused the bank to make inquiries. Whether or not the evidence establishes that the bank did not act without negligence is a question of fact, and in strictness should be determined separately with regard to each of the fifty

cheques signed by Abbott." (See FORGERY.)

(See Section 25, above, and Section 82, under CROSSED CHEQUE.)

(See AGENT, AUTHORITIES, INDORSEMENT.)

PER STIRPES. Short for *per stirpes et non per capita*, meaning by the roots and not by the heads. An example of the use of the phrase is where John Brown leaves a sum of money to be equally divided amongst his, say, four sons, and if any son dies before the testator the share of that deceased son to be equally divided amongst the children of that deceased son. The children divide, therefore, merely the share of their deceased parent, or *per stirpes*, and do not take, each of them, an equal share of the full sum of money left by John Brown—that is, not *per capita*. (See INTESTACY.)

PERMANENT BUILDING SOCIETY. A society which has not, by its rules, any fixed date or specified result at which it shall terminate. (See BUILDING SOCIETY.)

PERPETUAL ANNUITY. The right to an annual payment of a certain sum in perpetuity. The purchaser cannot obtain the principal back, but he can sell his right to the annual payment to someone else. The interest on Consols is practically a perpetual annuity. (See ANNUITY.)

PERPETUAL DEBENTURE. Section 89 of the Companies Act, 1948, states that a condition contained in any debentures or in any deed for securing any debentures, shall not be invalid by reason only that the debentures are made irredeemable, or redeemable only on the happening of a contingency, however remote, or on the expiration of a period, however long, any rule of equity to the contrary notwithstanding.

Although the debentures may be called irredeemable or perpetual they are nevertheless redeemable when the company goes into liquidation. The effect of a debenture of this nature is to grant an annuity for the life of the company to the holder thereof. (See DEBENTURE.)

PERSONAL CHATTELS. (See CHATTELS.)

PERSONAL ESTATE. PERSONALTY. Property such as money, goods, furniture, stocks and shares is personal estate, or personalty. Leasehold property is included in personalty.

The words used in a will with respect to the disposal of personal property differ from those used in connection with real property. Personalty is bequeathed and the beneficiary is called a legatee; realty is devised and the beneficiary is termed a devisee. (See INTESTACY, REALTY.)

PERSONAL REPRESENTATIVES. By the Administration of Estates Act, 1925—

Devolution of Real Estate.

Real estate to which a deceased person was entitled for an interest not ceasing on his death shall on his death, and notwithstanding any testamentary disposition thereof, devolve from time to time on the personal representative of the deceased, in like manner as before 1926 chattels real devolved on the personal representative.

The personal representatives are deemed in law his heirs and assigns within the meaning of all trusts and powers, and shall be the representatives in regard to the real estate as well as in regard to his personal estate. (Section 1.)

As respects real estate, where there are two or more personal representatives they must all join in any conveyance of such estate. (Section 2.)

The Act does not alter the rule that one representative may deal with pure personal property.

The definition in the Act of "real estate" is given under REAL ESTATE.

"Personal representatives" are executors and administrators.

"Representation" means probate of a will or grant of administration.

Probate. Section 27 gives protection to persons acting on probate or letters of administration. (See under PROBATE.)

Number of Personal Representatives.

Representation shall not be granted to more than four persons in regard to the same property; and administration shall, if any beneficiary is an infant or a life interest arises under the will or intestacy, be granted either to a trust corporation or to not less than two individuals. (Section 12.) (See TRUST CORPORATION.)

Infants as Executors.

Administration with the will annexed shall be granted to an infant's guardian, or such person as the Court thinks fit, until the infant attains the age of twenty-one. (Section 20 (1).)

Trust Corporation as Executor.

(See Section 14 under PROBATE.)

Special Executors for Settled Land.

A testator may appoint, and in default of such express appointment shall be deemed to have appointed, as his special executors

in regard to settled land, the trustees of the settlement and probate may be granted to such trustees specially limited to the settled land. A testator may appoint other persons, either with or without those trustees, to be his general executors for his other property. (Section 22.)

Intestacy.

Any real or personal estate of an intestate shall be held by his personal representatives:

(*a*) As to the real estate upon trust to sell;

(*b*) As to the personal estate upon trust to call in, sell, and convert into money such part as may not consist of money. (Section 33.) (See INTESTACY.)

Assent or Conveyance by Personal Representatives.

A personal representative may assent to the vesting in any person who may be entitled thereto of any estate or interest in real property to which the testator was entitled. The assent shall operate to vest the legal estate to which it relates in that person. An assent to the vesting of a legal estate shall be in writing, signed by the personal representative, and shall name the person in whose favour it is given. An assent not in writing or not in favour of a named person shall not be effectual to pass a legal estate. A written assent under hand to vesting an estate or interest in real estate in a person entitled thereto under a will or an intestacy is not chargeable with duty by Section 36 (11) of the Administration of Estates Act, 1925. It is not the practice of the Inland Revenue to claim duty if there is incorporated in the assent an acknowledgment of the right to production of probate or other covenant.

If an assent is made under seal, however, it will attract a fixed duty of 10s.

An assent made in respect of an appropriation of real estate in satisfaction of a pecuniary legacy will attract *ad valorem* conveyancing duty. Likewise an assent given to satisfy wholly or in part the charge given to a surviving spouse in an intestacy will attract similar duty.

Where an advance is to be made on real property to the person entitled to such property consequent upon a death, the banker should see that he holds the assent or conveyance of the personal representative.

Power to Mortgage.

In dealing with the real and personal estate, the personal representatives shall, for purposes of administration, or during a minority of any beneficiary or the subsistence of any life interest, or until the period of distribution arrives, have power to raise money by mortgage or charge (whether or not by deposit of documents) and such power may in the case of land be exercised by legal mortgage. (Section 39.)

Power to Postpone Distribution.

A personal representative is not bound to distribute the estate before the expiration of one year from the death. (Section 44.)

Death Duties.

Nothing in this Act shall—

(*a*) Alter any death duty payable in respect of the real estate or impose any new duty thereon:

(*b*) Render any real estate liable to legacy duty or exempt it from succession duty (now abolished):

(*c*) Alter the incidence of any death duties. (Section 53.)

Power to Employ Agents.

Personal representatives have power, under Section 23 of the Trustee Act, 1925, to employ agents in the administration of a testator's or intestate's estate. (See under TRUSTEE.)

Insolvent Estate. (See DEATH OF INSOLVENT PERSON.)

(See ADMINISTRATOR, EXECUTOR, INTESTACY, LETTERS OF ADMINISTRATION, PROBATE.)

PERSONAL SECURITY. An advance is said to be made upon personal security when another person becomes surety or guarantor for the amount. The term is used to distinguish the security from a deposit of deeds, or certificates or any other form of impersonal security. (See GUARANTEE.)

PETITION (BANKRUPTCY). (See BANKRUPTCY, RECEIVING ORDER.)

"PIG UPON BACON." In the case of an accommodation bill, where e.g., Brown accepts merely to oblige the drawer, Jones, Brown has no intention of meeting the bill at maturity. He expects that Jones will himself provide the funds necessary to pay the bill when it is due. As Jones in his own mind considers himself practically the acceptor as well as the drawer, Jones on Brown is therefore likened to a bill drawn by "Pig on Pork" or "Pig upon Bacon."

When the drawer and drawees of a bill are the same, as when a foreign branch of a firm draws on its London office, and there are no documents for goods attached to the bill, the firm is said to be drawing "Pig on Pork." Such bills require a banker's careful attention.

PLACING. A term applied to the process whereby the whole of a new issue by a company is allotted to a stockbroker or syndicate, who then "place" the shares with the public through the medium of the Stock Exchange.

PLEDGE. A pledge or pawn is a delivery of chattels or choses in action by a debtor to his creditor as security for his debt. It is to be distinguished from a mortgage in that, whilst possession of the thing passes to the pledgee, the property in the thing (i.e. the legal ownership) remains with the pledgor. With a mortgage of things other than land, the property in the thing passes to the mortgagee whilst the possession of it may remain with the mortgagor.

A pledge gives a right of sale if default is made in payment of the debt within a reasonable time after demand if no time for payment is expressed. A pledge must be distinguished from a lien. The former arises from express agreement; the latter by implication.

Negotiable instruments such as bearer bonds, and documents of title to goods, become security to a banker by way of pledge. A memorandum of deposit (*q.v.*) is taken, setting out the purpose of the deposit.

PLIMSOLL MARK. (See DEAD WEIGHT.)

POLICY OF INSURANCE. By the Stamp Act, 1891, the stamp duties are—

	£	s.	d.
POLICY OF LIFE INSURANCE—			
Where the sum insured does not exceed £10 . .	0	0	1
Exceeds £10 but does not exceed £25 . . .	0	0	3
Exceeds £25 but does not exceed £500—			
For every full sum of £50, and also for any fractional part of £50, of the amount insured .	0	0	6
Exceeds £500 but does not exceed £1,000—			
For every full sum of £100, and also for any fractional part of £100 of the amount insured.	0	1	0
Exceeds £1,000—			
For every full sum of £1,000, and also for any fractional part of £1,000, of the amount insured . . .	0	10	0
And see Sections 91, 98, and 100.			
POLICY OF INSURANCE AGAINST ACCIDENT and POLICY of insurance for any payment agreed to be made during the sickness of any person, or his incapacity from personal injury, or by way of indemnity against loss or damage of or to any property	0	0	6
(Increased from 1d. to 6d. by the Finance Act, 1920.)			
And see Sections 91, 98, 99, and 100.			

"91. For the purposes of this Act, the expression 'policy of insurance' includes every writing whereby any contract of insurance is made or agreed to be made, or is evidenced, and the expression 'insurance' includes assurance."

Policies of Insurance except Policies of Sea Insurance.

"98. (1) For the purposes of this Act the expression 'policy of life insurance' means a policy of insurance upon any life or lives or upon any event or contingency relating to or depending upon any life or lives except a policy of insurance against accident; and the expression 'policy of insurance against accident' means a policy of insurance for any payment agreed to be made upon the death of any person only from accident or violence or otherwise than from a natural cause, or as compensation for personal injury, and includes any notice or advertisement in a newspaper or other publication which purports to insure the payment of money upon the death of or injury to the holder or bearer of the newspaper or publication containing the notice only from accident or violence or otherwise than from a natural cause.

"(2) A policy of insurance against accident is not to be charged with any further duty than one penny [*increased to sixpence by the Finance*

Act, 1920], by reason of the same extending to any payment to be made during sickness or incapacity from personal injury."

By the Finance Act, 1899—

"11. The provisions contained in Section 98 of the Stamp Act of 1891 in reference to the expression 'policy of insurance against accident' shall extend to and include policies of insurance or indemnity against liability incurred by employers in consequence of claims made upon them by workmen who have sustained personal injury when the annual premium on such policies does not exceed one pound." By Section 8 (3) of the Finance Act, 1907, the above Section shall be read as if two pounds were substituted for one pound as the amount of the annual premium.

By the Finance Act, 1895—

"13. Whereas Section 98 of the Stamp Act, 1891, provides that 'a policy of insurance against accident' includes a notice or advertisement in a newspaper or other publication which purports to insure the payment of money upon the death of or injury to the holder or bearer of the newspaper or publication from accident, and doubts have arisen as to the like notices or advertisements in other cases, it is hereby for the removal of doubts declared that 'a policy of insurance for any payment agreed to be made during the sickness of any person or his incapacity from personal injury' within the meaning of the Stamp Act, 1891, includes a notice or advertisement in a newspaper or other publication which purports to insure such payment."

By the Stamp Act, 1891—

"99. The duty of one penny [*increased to sixpence by the Finance Act*, 1920], upon a policy of insurance other than a policy of sea insurance or life insurance may be denoted by an adhesive stamp, which is to be cancelled by the person by whom the policy is first executed.

"100. Every person who—

"(1) Receives, or takes credit for, any premium or consideration for any insurance other than a sea insurance and does not, within one month after receiving, or taking credit for, the premium or consideration, make out and execute a duly stamped policy of insurance; or

"(2) Makes, executes, or delivers out, or pays or allows in account, or agrees to pay or allow in account, any money upon or in respect of any policy other than a policy of sea insurance which is not duly stamped;

shall incur a fine of twenty pounds."

By Section 116 of the Stamp Act, 1891, the Commissioners may, in certain cases, enter into an agreement with any person issuing policies of insurance against accident for the delivery to them of quarterly accounts of all sums received in respect of premiums, and in lieu of duty on such policies and by way of composition of that duty there shall be charged a duty at the rate of £5 per cent on the aggregate amount of such sums received for premiums. This applies to insurances effected in newspapers. (See FIRE INSURANCE, LIFE POLICY, MARINE INSURANCE POLICY.)

PORT BILL OF LADING. (See BILL OF LADING.)

PORT OF REGISTRY. The port at which a ship is registered. (See SHIP.)

POSITIVE PRESCRIPTION. (See PRESCRIPTION.)

POSSESSORY TITLE. Where a person has been in the undisturbed possession of real property for twelve years and has not paid any rent or acknowledged any person's right to the property, he acquires a possessory title and becomes the owner of the property. But if the rightful owner was under a disability, such as infancy or lunacy, an action may be brought against the person claiming a possessory title within six years after the disability has ceased, but in no case can the land be recovered after thirty years from the time when the right of action first accrued, although the person under disability may have remained under disability during the whole of the thirty years.

Where a mortgagee acquires a title against the mortgagor by undisturbed possession for twelve years of freeholds, he may enlarge the mortgage term into a fee simple. (Law of Property Act, 1925, Section 88 (3).) In the case of leaseholds he may by deed declare that the leasehold reversion shall vest in him. (Section 89 (3).)

POSSESSORY TITLE (LAND REGISTRY). Where a possessory title is granted, no official examination is made other than to establish that the applicant has a *prima facie* right to the land and no guarantee of title is given up to the point of registration. From that date, however, the title is guaranteed and dealings can only be made by registered instruments. All the documents of title must accompany the land certificate, and the title up to the date of registration

must be investigated in the ordinary way. Where land has been registered with a possessory title, if freehold for fifteen years and if leasehold for ten years, the Registrar may grant an absolute title in the case of freehold land and a good leasehold title in the case of leasehold land.

The Registrar can refuse to register with possessory title and can grant an absolute or good leasehold title as the case may be, whether the applicant consents or not. (Land Registration Act, Sections 4 (3) and 8 (4).)

Possessory titles are consequently now quite exceptional. (See LAND REGISTRATION.)

POST. Where a letter is posted and is not returned through the Dead Letter Office, it is a presumption of law that it has been received by the person to whom it was addressed. The sender, however, must be prepared to prove that he posted the letter. For this reason it is important that a book be kept containing particulars of all letters dispatched each day, showing the addresses, the time the letters were posted and the initials of the person, or persons, who posted them, and the office where they were posted.

Before sending notes by post full particulars of the number, date, place of issue, and denomination of each note should be taken. Some persons cut notes in two and send the halves by different mails, the second halves not being sent until an acknowledgment is received for the first halves.

When there is authority to send a cheque by post, the post is considered as the agent of the person to whom the cheque is sent.

Where a cheque is lost in the post, the legal liability for the loss falls upon the person who requested the cheque to be forwarded by post. If the creditor did not ask for the cheque to be sent by post, then the liability would fall upon the sender. When a creditor requests that a cheque be forwarded by post and instructs his debtor how the cheque should be crossed, the debtor must bear the consequences if he does not carry out those instructions. In *Car and General Insurance Corporation* v. *The British Motor Cab Co.* (a case decided in the Commercial Court, 1912), where the defendants sent an open cheque to the plaintiffs and the cheque was stolen in the post, it was decided that the defendants must bear the loss, because they had not complied with their previous practice of sending a crossed cheque to the plaintiffs. (See STOLEN CHEQUE.)

A company's articles of association may contain a clause protecting the company against loss of a cheque or warrant in the post. (See under DIVIDEND WARRANT.)

POST-DATED. A cheque which is dated subsequent to the actual date on which it is drawn, and which is issued before the date it bears, is called a post-dated cheque.

A bill is not invalid by reason only that it is post-dated. (Section 13 (2), Bills of Exchange Act, 1882.) A cheque is included under the word "bill" in that Section. A post-dated cheque is therefore a legal instrument and can be negotiated as soon as drawn.

In *Royal Bank of Scotland* v. *Tottenham* (1894), 71 L.T. 168, the plaintiffs had credited a post-dated cheque, before the date appearing on the cheque, to a customer's account, and had permitted the amount to be drawn upon. The cheque was drawn by the defendant upon another bank and he stopped payment of it. The plaintiffs brought the action as holders of the cheque to recover the amount thereof, but the defendant contended that the plaintiffs were not holders for value and therefore could not recover upon the cheque. Lord Esher, in the Court of Appeal, held that "as soon as the bankers gave credit for the cheque to their customer, they gave value for it." Judgment was given for the plaintiffs.

A post-dated cheque should not be paid before the date appearing thereon. If a banker pays it before that date he will be liable for any consequences that may ensue, as, for instance, in the event of the dishonour of a cheque, which would not have been dishonoured if the post-dated cheque had not been paid, or in the event of the drawer giving notice to "stop payment" before the date of the cheque arrives. Where the banker, on whom a post-dated cheque is drawn, pays it by mistake, and its payment is stopped before the date arrives, Sir John Paget expresses the opinion that the banker could not debit the cheque to the drawer's account, and that he is not entitled to the position of a holder in due course and could not sue his customer.

A cheque presented for payment before the date has arrived should be returned marked "post-dated."

If a cheque is presented on a Saturday, and is dated for the next day, Sunday, it should not be paid on the Saturday.

When the date upon a cheque has arrived, a banker is entitled to pay it, and incurs no liability in doing so.

After the date any holder may sue upon the cheque, though before the date he could not do so.

A post-dated cheque is sometimes given because the drawer does not expect to have funds to meet it until that date arrives. A purchaser often gives such a cheque, so that he may have a few days in which to examine his purchase before the cheque can be paid.

If a person draws and issues a cheque on 1st February and dates it 1st March, it is practically the same as if he accepted a bill payable one month after 1st February. But if he accepted a bill, the stamp duty would be an *ad valorem* one, whereas on the post-dated cheque the duty is the usual duty upon a cheque, twopence. It is thought by some authorities that a drawer may be liable to a penalty on the question of insufficient stamp duty, under the Stamp Act, 1891, but that question could not arise in an action on the cheque after the date of the cheque has arrived, because then the cheque would no longer be post-dated. In *Royal Bank of Scotland* v. *Tottenham* (1894), 71 L.T. 168, in the Court of Appeal, it was held that a cheque was not invalid because it was post-dated and bore only a penny stamp. In *Hitchcock* v. *Edwards* (1889), 60 L.T. 636, it was held that "a post-dated cheque, bearing a penny stamp, is a valid and negotiable instrument, and is complete and regular upon the face of it."

When a post-dated cheque is handed to a banker for collection when the date arrives, the customer should sign a paying-in slip dated for the day on which the cheque is to be credited.

Bankers do not discount post-dated cheques, but money-lenders advertise that they cash them for clients at a certain discount. (See BILL OF EXCHANGE.)

POST OBIT BOND. (*Post obit*, Latin, after he dies.) A bond in which a person agrees to pay a certain sum of money after the death of another person.

If there is anything of a fraudulent or over-reaching nature in the bond, the Courts may set it aside and order repayment merely of the actual sum lent, plus reasonable interest.

POST OFFICE MONEY ORDER. (See MONEY ORDER.)

POST OFFICE SAVINGS BANKS. The Post Office Savings Banks were established by Act of Parliament in 1861, and every depositor has the direct security of the State for the repayment of his deposits.

Money orders and cheques are received provided they are not crossed to a particular bank.

By the Savings Banks (Limits of Deposits) (Amendment) Order, 1952, not more than £3,000 may now be deposited by one person although interest on deposits and dividends from Government securities may be credited in addition to this limit. Not more than £500 may be deposited in any one year, but the amount of any one withdrawal during the year may be replaced.

Deposits may be made by children seven years old and upwards; and on behalf and in the names of children under seven years old. In this case the money is not repayable until the children attain the age of seven.

Every deposit must be entered in the depositor's book by the postmaster or person receiving it, who must affix his initials and the stamp of his office to each entry. An acknowledgment for every deposit of £20 and upwards, should be received by post from the Savings Bank Department in London.

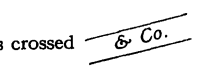
Interest at the rate of £2 10s. per cent per annum is allowed on every complete pound, and commences on the first day of the month next following the deposit.

When a depositor wishes to withdraw any part of the sum due to him, he must make application for the same on a printed form, called a notice of withdrawal, but sums up to £3 may be withdrawn on demand.

Depositors may invest their deposits in various Government stocks.

A deposit book is not a proper security for money lent, and no claim by any person holding a deposit book in respect of a loan will be recognised by the Savings Bank Department. Deposits in the Post Office Savings Bank are not liable to "attachment," or to its Scotch equivalent "arrestment."

POSTAL ORDER. A postal order is not a negotiable instrument, and therefore a holder does not obtain any better title to it than the person had from whom he received it.

If a postal order is crossed 

payment by the Post Office will only be made through a banker; and, if the name of a banker is added, payment will only be made through that banker. The Post Office pay postal orders to a banker, without the signature of the payee, provided the banker's name is stamped upon them, but the banker should see that his customer always writes or stamps his name on all orders, in case they

are returned from the Post Office. The crossing does not bring the orders within the crossed cheques sections of the Bills of Exchange Act.

By an arrangement with the Postmaster-General, banks must furnish post office officials on demand with the name and address of the party who paid in a postal order which is the subject of inquiry.

A postal order may be collected either at the office where it is made payable, or at the General Post Office, London.

The banker's position, with regard to postal orders, is safeguarded by the Post Office Act, 1908 (Section 25), which provides that a banker who, in collecting for any principal, shall have received payment or been allowed by the Postmaster-General in account, in respect of any postal order or of any document purporting to be a postal order, shall not incur liability to anyone except such principal by reason of having received such payment or allowance, or having held or presented such order or document for payment.

At the outbreak of war in 1914, postal orders were made legal tender for a short period. On 1st September, 1939, in anticipation of the second German war, they were again made legal tender to ease the currency situation. They ceased to be legal tender in May, 1940.

POUND. A sovereign (*q.v.*). In the time of William the Conqueror a pound of silver was coined into 240 silver pence, each equal to a pennyweight, whence the origin of the word pound.

A five-pound piece is of the standard weight of five sovereigns.

A two-pound piece is of the standard weight of two sovereigns, 246·54895 grains troy, and its least current weight is 245 grains. (See COINAGE.)

POWER OF ATTORNEY. A power of attorney is an instrument by which one person is empowered to act for another. It begins with what are known as recitals—statements of the names, addresses, and descriptions of the donor and donee, the reason, perhaps, for the giving of the authority, and the expression of the authority itself. The body of the instrument gives the actual terms and limits of the authority, and the instrument closes with the signature of the donor and the witnesses. It is stamped 10s.

Powers of attorney are of two types, special and general, the former being one given for a specific purpose and the latter a general authority and being intended to operate for a length of time. A general power of attorney does not usually state that it shall be in force for any given time, and it may be revoked either expressly or by implication. For all intents and purposes it is revoked by the death, lunacy, or bankruptcy either of the donor or of the donee. It may be revoked by implication where it is clear that the purpose, or period, for which the authority was given has been achieved, or has come to an end. It is a question of the facts of the particular case. Where there is more than one attorney, empowered only to act jointly, the power is revoked on the death of one.

Section 126 of the Law of Property Act, 1925, provides that an irrevocable power of attorney given for valuable consideration shall not, in favour of a purchaser, be revoked at any time, either by anything done by the donor of the power without the concurrence of the donee of the power, or by the death, disability, or bankruptcy of the donor.

Equitable mortgages sometimes contain an irrevocable power of attorney, but it is conceived that the death of the mortgagor does not entitle the mortgagee to use the power of attorney for sale purposes, as it only avails an innocent purchaser.

Many powers state that they are irrevocable for six or twelve months. This does not mean that they cannot be revoked during that period, except only as regards a purchaser of land for value and in good faith, whose title is derived from the vendor by virtue of the power of attorney.

If a power of attorney is given expressly on account of the donor's absence abroad, it automatically lapses on his return to this country, in the absence of any provision otherwise.

The authority embodied in a power of attorney must be interpreted rigidly. For instance, a donee has no power to borrow unless he is expressly authorised by the instrument. In this connection, drawing on an overdrawn account is a borrowing, so that an attorney may not draw on an overdrawn account, even where there is authority to draw on a current account, if there is not also an express authority to borrow. Again, an authority may be restricted, as where it is granted "for the purposes aforesaid." Clauses embodying such a limitation place on those dealing with the attorney the onus of seeing that what is done by him is done for the purposes specified. Clauses

authorising drawing on a current account, or the purchase and sale of securities, or the management of an estate, are known as specific clauses, but most powers contain what is known as a general clause, such as "to do all those acts, deeds, or things of whatsoever kind or nature as fully and effectually" as the donor himself could do, were it convenient for him to do so. Such a general clause must not be read by itself, but only in relation to the specific clauses which precede it; in other words, it extends the operation of a specific clause to cover transactions which are necessary and ancillary to giving effect to that specific clause.

Anyone capable of contracting may give a power of attorney, but it may not include in it any power which he could not himself exercise. For instance, an infant may not authorise his attorney to borrow and to contract to repay the money borrowed. Anyone may act as an attorney except a lunatic and, possibly, a bankrupt. A lunatic may execute a power only in a lucid interval. Trustees may not appoint attorneys where, by doing so, they delegate the exercise of their discretion, unless expressly authorised by the trust deed or by virtue of Section 25 of the Trustee Act, 1925, which provides that, subject to any direct prohibition in the trust instrument, a trustee intending to be out of the United Kingdom for more than one month, may delegate his powers to another party, not being his sole co-trustee, unless the latter is a trust corporation. Delegation has to be by power of attorney, which must be filed at the Central Office of the Supreme Court within ten days of execution. The power does not come into operation until the donor leaves the country and is revoked on his return, although any person dealing with the attorney is entitled to presume that it is still in force.

Powers of attorney are governed largely by Sections 123–129 of the Law of Property Act, 1925. The principal of these are: Section 125, which provides for the filing of powers at the Central Office of the Supreme Court—the statute says that a power relating to land *shall* be filed; Section 124, which enables a person dealing with an attorney, in circumstances in which there is uncertainty as to the power being still in force, to protect himself by the statutory declaration of the attorney, executed immediately before or within three months after the transaction.

An attorney may not, except under the clearest authority, delegate his powers, nor may he use the power to employ his principal's property for his own ends (*vide* the *Terrington* cases).

Most powers contain a clause in which the donor undertakes to ratify anything which his attorney may do, but this should not, in the absence of the ability to draw the widest interpretation from the undertaking, be read to cover transactions which are not unquestionably provided for in the instrument.

In considering whether to agree to allowing operations under a power of attorney, a banker should, then, satisfy himself that it is undoubtedly in force; as to the identity of the person claiming to act as the attorney; and as to the powers which the instrument is intended to permit. He should obtain a copy for reference purposes and see that the original is duly stamped. Where executed and stamped abroad, it must be stamped in this country. If possible, a banker will endeavour to get a standard form of mandate executed, which explicitly and expressly provides for banking operations, rather than to act on a power of attorney, which frequently does not expressly provide for such matters as the drawing of cheques, borrowings, etc. An attorney may sign the donor's name simply; more usually he signs "John Brown by his attorney, A. Smith."

By Section 34 of the Companies Act, 1948, 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. An attorney should not be allowed to place cheques drawn by him on his principal's account to his own private account without inquiry. This is specially so where pressure is being exercised in respect of an overdraft on the private account. (*Midland Bank* v. *Reckitt and Others, The Times*, 1st March, 1932.)

	£	s.	d.
Stamp duties—			
LETTER OR POWER OF ATTORNEY, and COMMISSION, FACTORY, MANDATE, or other instrument in the nature thereof—			
(1) By any petty officer, seaman, marine, or soldier serving as a marine, or his representatives, for receiving prize money or wages	0	1	0
(2) For the receipt of the			

32—(B.1535)

	£	s.	d.
dividends or interest of any stock—			
Where made for the receipt of one payment only	0	1	0
In any other case . .	0	5	0
(3) For the receipt of any sum of money, or any bill of exchange or promissory note for any sum of money, not exceeding £20, or any periodical payments not exceeding the annual sum of £10 (*not being hereinbefore charged*)	0	5	0
(4) Of any kind whatsoever not hereinbefore described . . .	0	10	0

Exemptions.

(1) Letter or power of attorney for the receipt of dividends of any definite and certain share of the Government or Parliamentary stocks or funds producing a yearly dividend less than £3.

(2) Letter or power of attorney or proxy filed in the Probate Division of the High Court of Justice in England or Ireland, or in any ecclesiastical court.

(3) Order, request, or direction under hand only from the proprietor of any stock to any company or to any officer of any company or to any banker to pay the dividends or interest arising from the stock to any person therein named.

(4) Letter or power of attorney for the sale, transfer, or acceptance of any of the Government or Parliamentary stocks or funds. (This exemption was added by the Finance Act, 1917, Section 30.)

(5) Letter or power of attorney for the sole purpose of appointing or authorising a proxy to vote at any one meeting at which votes may be given by proxy. (Finance Act, 1949.)

By the Finance Act, 1927, Section 56, no instrument shall be charged with duty more than once by reason only that more persons than one are named in the instrument as donors or donees of the powers thereby conferred, or that those powers relate to more than one matter.

POWER OF SALE. (See MORTGAGE.)

PRECEPT. An order from responsible persons directing payments to be made.

PRE-EMPTION. The right which a vendor has in certain cases to buy back the land which he has sold. For example, where the owner of land has been compelled to sell land to a water company (in accordance with statutory powers obtained by the company), the company cannot sell any of that land (if not required) to anyone else without first giving the vendor the opportunity to exercise his right to re-purchase it. This right, however, may be released in the conveyance to the company by a clause to the effect that the vendor hereby releases all right of pre-emption now vested in him by statute or otherwise.

All statutory and other rights of pre-emption affecting a legal estate shall be capable of release, and unless released shall remain in force as equitable interests only. (Section 186, Law of Property Act, 1925.)

PREFERENCE STOCK OR SHARES. Stock or shares entitling the holder to preferential rights as to dividend over other classes of shareholder and, in some cases, as to return of capital in addition. They bear a stated rate of dividend. In the case of cumulative preference shares, if such dividend is not earned in any one year, the profits of succeeding years must be used to pay the arrears before any dividend is paid on other classes of shares. In the case of non-cumulative preference shares, the dividend is only paid for one year if profits have been made in that year sufficient for the purpose. Participating preference shares entitle the holder to a fixed dividend and, in addition, to a share in any surplus profits after the ordinary shareholders have received a maximum stated percentage.

There may be first preference shares and second preference shares, etc., one class ranking behind the other as regards priority of dividend or capital. Usually voting powers *re* preference shares are very limited, in a good many cases being exercisable only after the company has passed its preference dividend.

By the Companies Act, 1948, Section 58, a company may, if the Articles so provide, issue redeemable preference shares. (See REDEEMABLE PREFERENCE SHARES, SHARE CAPITAL.)

PREFERENTIAL PAYMENTS (BANKRUPTCY). The Bankruptcy Act, 1914, Section 33, provides that in the distribution of the property of a bankrupt there shall be paid in priority to all other debts—

(*a*) Parochial and local rates which have become due and payable within twelve months next before the date of the receiving order, and all assessed taxes, land tax, property, or income tax assessed up to the 5th April next before the date of the receiving order, and not exceeding in the whole one year's assessment.

(*b*) The wages or salary of any clerk or servant, labourer or workman, in respect of services rendered during four months before the date of the receiving order, not exceeding £200. (This is an amendment of the principal Act by Section 115 of the Companies Act, 1947.)

In the case of a company being wound up, the Companies Act, 1948, Section 319, provides that the above-named debts shall be paid in priority to all other debts, the date being (instead of the date of the receiving order), (*a*) in the case of a company ordered to be wound up compulsorily which had not previously commenced to be wound up voluntarily, the date of the winding-up order; and (*b*) in any other case, the date of the commencement of the winding-up (s.s. (7)). Unless a company is being wound up voluntarily merely for the purposes of reconstruction or of amalgamation with another company, or has entered into such a contract with insurers as is mentioned in Section 7 of the Workmen's Compensation Act, 1925, all amounts due in respect of any compensation or liability for compensation under the said Act accrued before the said date, are also preferential payments (s.s. (1) (*d*)).

The foregoing debts shall, 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. (Section 319.) As to preferential rights *re* company's wages cheque, see WAGES CHEQUES.

In the event of a landlord or other person distraining or having distrained on any goods or effects of a bankrupt, or a company being wound up, within three months next before the date of the receiving order, or winding-up order, the foregoing debts to which priority is given 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. (Bankruptcy Act, 1914, Section 33 (4); and Companies Act, 1948, Section 319.)

Where a receiver is appointed on behalf of the holders of a company's debentures secured by a floating charge, then, if the company is not at the time in course of being wound up, preferential payments having priority to all other debts shall be paid out of any assets coming to the hands of the receiver in priority to any claim for principal or interest in respect of the debentures. (Companies Act, 1948, Section 94.) In *In re Lewis Merthyr Consolidated Collieries Co., Ltd., Lloyds Bank* v. *The Company*, [1928] *Weekly Notes*, p. 247, C.A., the Court of Appeal held that the above Section did not on its true construction apply so as to give priority in respect of assets secured by a fixed charge, but only of assets secured by a floating charge.

If a landlord distrains after the commencement of the bankruptcy, it shall be available only for the six months' rent, accrued prior to the order of adjudication, but he may prove under the bankruptcy for the surplus due for which the distress may not have been available. (Bankruptcy Act, 1914, Section 35.)

By the Friendly Societies Act, 1896, Section 35, upon the bankruptcy of any officer of a registered society having in his possession by virtue of his office any money belonging to the society, the trustee shall pay the money to the society in preference to any other debts against the estate of the officer.

Preferential debts rank equally between themselves, and, if the assets are insufficient to meet them, they shall abate in equal proportions. Payment of these debts is subject to the retention of such sums as may be necessary for the costs of the administration or winding up. (See FRAUDULENT PREFERENCE.)

PREFIX. French, at a fixed date. A bill drawn payable at a date "fixed," or "*prefix*," does not take days of grace. If the word "fixed," or "*prefix*," is not used, days of grace are allowed.

PREMISES. The beginning of a deed or conveyance which sets forth the parties and describes the subject-matter, and which is afterwards alluded to in the deed as "the premises."

PREMIUM. The amount which is payable annually during life, or during a certain number of years, in order to assure the payment, either at death or at a fixed date, as the case may be, of the sum named in an assurance policy. (See LIFE POLICY.) Also the amount payable to keep in force a fire policy. (See FIRE INSURANCE.)

When the consideration (or part of it) in a lease consists of a lump sum, it is called the premium. (See LEASEHOLD.)

PREMIUM BOND. An acknowledgment of indebtedness by a foreign state, where in some cases no interest is paid, and in others only a very small rate of interest is given, but, at certain times, a drawing takes place and the holders of bonds bearing the numbers that are drawn may receive large money prizes.

In the case of the French Government Premium Bond issue, 1919, 5 per cent bonds of 500 francs each (issued at the price of 495 francs) are redeemable, within 75 years, at 600 francs (that is, at par plus a premium of 100 francs). In addition, four drawings take place annually when there are prizes of large sums of money for the possessors of the bonds bearing the lucky numbers. Bonds which have the chance of winning prizes are also called Prize Bonds.

Premium bonds are not issued in this country. They have been held to come within the Gaming Act as lotteries.

PRESCRIPTION. (See SCOTTISH APPENDIX.)

PRESCRIPTIVE RIGHT. A right acquired by lapse of time. (See EASEMENTS, LIMITATION ACT, 1939, POSSESSORY TITLE.)

"PRESENT AGAIN." These words are sometimes written by a banker upon a cheque which is returned unpaid because of insufficient funds in the customer's account to meet it. It is not, however, by itself a correct answer to give, as it does not afford any explanation why the cheque has been returned. The best answer to write upon a dishonoured cheque is "Refer to drawer."

Sometimes the words are joined with another answer, as "Refer to drawer—Present again," "Not sufficient—Present again." No doubt the words "Present again" are used with the idea of minimising the risk of injury to the drawer's credit by returning the cheque, but it is perhaps questionable whether they are altogether prudent words to use.

The banker to whom a cheque is returned with a request "Present again" advises his customer of the dishonour of the cheque and forwards it for representation.

PRESENTMENT FOR ACCEPTANCE. When a bill of exchange is presented to a drawee in order that it may be accepted by him, it is a presentment for acceptance.

By Section 39 of the Bills of Exchange Act, 1882—

"(1) Where a bill is payable after sight, presentment for acceptance is necessary in order to fix the maturity of the instrument.

"(2) Where a bill expressly stipulates that it shall be presented for acceptance, or where a bill is drawn payable elsewhere than at the residence or place of business of the drawee it must be presented for acceptance before it can be presented for payment.

"(3) In no other case is presentment for acceptance necessary in order to render liable any party to the bill.

"(4) Where the holder of a bill, drawn payable elsewhere than at the place of business or residence of the drawee, has not time, with the exercise of reasonable diligence, to present the bill for acceptance before presenting it for payment on the day that it falls due, the delay caused by presenting the bill for acceptance before presenting it for payment is excused, and does not discharge the drawer and indorsers."

With regard to the time for presenting a bill payable after sight, Section 40 provides as follows—

"(1) Subject to the provisions of this Act, when a bill payable after sight is negotiated, the holder must either present it for acceptance or negotiate it within a reasonable time.

"(2) If he do not do so, the drawer and all indorsers prior to that holder are discharged.

"(3) In determining what is a reasonable time within the meaning of this Section, regard shall be had to the nature of the bill, the usage of trade with respect to similar bills, and the facts of the particular case."

The rules as to presentment for acceptance and the excuses for non-presentment are given in Section 41—

"(1) A bill is duly presented for acceptance which is presented in accordance with the following rules—

"(*a*) The presentment must be made by or on behalf of the holder to the drawee or to some person authorised to accept or refuse acceptance on his behalf at a reasonable hour on a business day and before the bill is overdue:

"(*b*) Where a bill is addressed to two or more drawees, who are not partners, presentment must be made to them all, unless one has authority to accept for all, then presentment may be made to him only:

"(*c*) Where the drawee is dead, presentment may be made to his personal representative:

"(*d*) Where the drawee is bankrupt, presentment may be made to him or to his trustee:

"(*e*) Where authorised by agreement or usage, a presentment through the post office is sufficient.

"(2) Presentment in accordance with these rules is excused, and a bill may be treated as dishonoured by non-acceptance—

"(*a*) Where the drawee is dead or bankrupt, or is a fictitious person or a person not having capacity to contract by bill:

(*b*) Where, after the exercise of reasonable diligence, such presentment cannot be effected:

"(*c*) Where, although the presentment has been irregular, acceptance has been refused on some other ground.

"(3) The fact that the holder has reason to believe that the bill, on presentment, will be dishonoured does not excuse presentment."

In practice a bill is presented for acceptance as soon as possible after it has been drawn, and until it has been accepted the drawee is under no liability whatever with regard to it. An after date bill having more than three days to run before maturity is, in London, presented for acceptance. The sooner the holder of an unaccepted bill procures the drawee's acceptance the better, for he then obtains the further security in the liability of the acceptor. When bills are received by a banker in order that he may get them accepted, they are presented to the drawee on the day of receipt, and if the drawee does not accept when they are presented, it is customary to leave the bills with him for twenty-four hours (exclusive of Sundays and holidays), or until close of business on a half-holiday if the twenty-four hours are not completed, in which he has to decide whether, or not, he will accept them. When a bill is left for acceptance a banker marks it so that he may know that he gets the same bill back again. If a banker is negligent in obtaining an acceptance he may render himself liable thereon, especially in the case of a bill drawn payable at so many days "after sight," as the drawer and indorsers may thereby be discharged. The law does not lay down any absolute rule as to what time is reasonable or unreasonable in which to carry out an instruction to obtain an acceptance, but in most cases a banker would present a bill for acceptance on the day that he receives it. Having left the bill with a drawee, it is part of the banker's duty to call again for it and not to wait till the drawee returns it to him, though an arrangement may be made with the drawee to return it. The holder of a bill may refuse to take a qualified acceptance (see ACCEPTANCE QUALIFIED), and a banker should therefore get instructions from his correspondent if a qualified acceptance is offered.

A banker should not give up a bill, sent to him to obtain acceptance, against the drawee's cheque as that would release the drawer and indorsers of the bill. If a cheque is offered, the banker should obtain instructions from his correspondent.

Where bills of lading and other documents are attached to a bill, they are exhibited to the drawee at the same time as the bill is presented for acceptance, but if the bill is left with the drawee until the next day the documents are retained by the banker and not left with the drawee. The banker, however, may have instructions to deliver up the documents to the drawee after he has accepted the bill. In the case of a foreign bill sent for acceptance, instructions usually accompany the bill as to what has to be done in the event of non-acceptance, such as "protest if not accepted" or "if not accepted do

not protest but send an advice by wire" or "no expense to be incurred."

The holder of a bill, by presenting it for acceptance, does not warrant the genuineness of the bill, or of any of the signatures thereon, or that any accompanying documents are genuine or represent actual goods. (*Guaranty Trust Company of New York* v. *A. Hannay & Co.* (1918), 34 T.L.R. 427.)

Where a bill is received from a correspondent in order to obtain the acceptance of the drawee, and the drawee lives at such a distance as to necessitate either sending the bill to him or asking him to call at the bank to accept it, the correspondent should be advised of what is being done so that he may understand the delay. (See BILL OF EXCHANGE.)

PRESENTMENT FOR PAYMENT. It is of the utmost importance that a bill of exchange be presented for payment on the date it falls due. The following rules are laid down by the Bills of Exchange Act, 1882—

"Section 45. Subject to the provisions of this Act a bill must be duly presented for payment. If it be not so presented the drawer and indorsers shall be discharged.

"A bill is duly presented for payment which is presented in accordance with the following rules—

"(1) Where the bill is not payable on demand, presentment must be made on the day it falls due.

"(2) Where the bill is payable on demand, then, subject to the provisions of this Act, presentment must be made within a reasonable time after its issue in order to render the drawer liable, and within a reasonable time after its indorsement, in order to render the indorser liable.

"In determining what is a reasonable time, regard shall be had to the nature of the bill, the usage of trade with regard to similar bills, and the facts of the particular case.

"(3) Presentment must be made by the holder or by some person authorised to receive payment on his behalf at a reasonable hour on a business day, at the proper place as hereinafter defined, either to the person designated by the bill as payer, or to some person authorised to pay or refuse payment on his behalf if with the exercise of reasonable diligence such person can there be found.

"(4) A bill is presented at the proper place—

"(*a*) Where a place of payment is specified in the bill and the bill is there presented.

"(*b*) Where no place of payment is specified, but the address of the drawee or acceptor is given in the bill, and the bill is there presented.

"(*c*) Where no place of payment is specified and no address given, and the bill is presented at the drawee's or acceptor's place of business if known, and, if not, at his ordinary residence, if known.

"(*d*) In any other case if presented to the drawee or acceptor wherever he can be found, or if presented at his last known place of business or residence.

"(5) Where a bill is presented at the proper place, and after the exercise of reasonable diligence, no person authorised to pay or refuse payment can be found there, no further presentment to the drawee or acceptor is required.

"(6) Where a bill is drawn upon, or accepted by two or more persons who are not partners, and no place of payment is specified, presentment must be made to them all.

"(7) Where the drawee or acceptor of a bill is dead, and no place of payment is specified, presentment must be made to a personal representative, if such there be, and with the exercise of reasonable diligence he can be found.

"(8) Where authorised by agreement or usage a presentment through the post office is sufficient."

It should be noted that a presentment through the post office (s.s. 8) is in order only where authorised by agreement or usage. If, therefore, a bill accepted at the X & Y Bank, Leeds is presented by post to that bank by a stranger, the bank would return it to the stranger with the answer that it must, according to custom, be presented through a banker.

Presentment to the acceptor of an accommodation bill must be made just as in the case of an ordinary bill.

It should be particularly noted that, if

these rules are not properly attended to, the drawer and indorsers shall be discharged, both with respect to the bill and to the consideration for which the bill was given. The bill itself should be presented, and if the acceptor has left the address shown on the bill, reasonable diligence must be used to find his new address and present it there. An acceptor is not discharged if the bill is not presented to him.

Section 52 provides—

"(1) When a bill is accepted generally presentment for payment is not necessary in order to render the acceptor liable.

"(2) When by the terms of a qualified acceptance presentment for payment is required, the acceptor, in the absence of an express stipulation to that effect, is not discharged by the omission to present the bill for payment on the day that it matures.

"(3) In order to render the acceptor of a bill liable, it is not necessary to protest it, or that notice of dishonour should be given to him.

"(4) Where the holder of a bill presents it for payment, he shall exhibit the bill to the person from whom he demands payment, and when a bill is paid the holder shall forthwith deliver it up to the party paying it."

With regard to Section 52 (1), "the theory of English law is that the debtor should seek out his creditor. The practical effect of this rule is that the acceptor cannot take advantage of any irregularity in the presentment." (Chalmers.)

Though non-presentment, or delay in presentment, of a bill releases the drawer and indorsers, there are certain cases where the Bills of Exchange Act excuses delay, or non-presentment. They are given in Section 46—

"(1) Delay in making presentment for payment is excused when the delay is caused by circumstances beyond the control of the holder, and not imputable to his default, misconduct, or negligence. When the cause of delay ceases to operate presentment must be made with reasonable diligence.

"(2) Presentment for payment is dispensed with—

"(*a*) Where, after the exercise of reasonable diligence, presentment, as required by this Act, cannot be effected. The fact that the holder has reason to believe that the bill will, on presentment, be dishonoured, does not dispense with the necessity for presentment.

"(*b*) Where the drawee is a fictitious person.

"(*c*) As regards the drawer, where the drawee or acceptor is not bound, as between himself and the drawer, to accept or pay the bill, and the drawer has no reason to believe that the bill would be paid if presented.

"(*d*) As regards an indorser, where the bill was accepted or made for the accommodation of that indorser, and he has no reason to expect that the bill would be paid if presented.

"(*e*) By waiver of presentment, express or implied."

In the case of a bill after date, it is necessary, in order to prevent the discharge of the other parties, that the bill be presented to the acceptor, at the place where payable, even if he said before the bill was due that he would not pay it at maturity, or if he called at the bank on the due date and said he could not pay it. If it is accepted payable at a bank, and the acceptor says he has nothing in his account to meet the bill, it is still necessary formally to present the bill at the bank indicated. It must be presented within the usual business hours.

Presentment before the actual due date does not preserve recourse against the other parties.

Where a separate guarantee has been given by anyone on behalf of the drawer or an indorser, the guarantor is discharged by such delay or non-presentment as would discharge the drawer or indorser, but the liability of a guarantor for an acceptor continues in the same way as an acceptor's liability.

It has been decided that where a bill is held by a banker which is accepted at that banker's, he need not present it to the acceptor but merely refer to his own books containing the acceptor's account to ascertain whether, or not, it may be paid.

If a bill is drawn payable in one place,

and accepted payable in another, it should be presented at the place where accepted payable.

If an acceptor does not pay a bill when it is presented to him a notice may be left at his address informing him that the bill lies at the bank, and that it requires his attention before closing time.

Lord Tenterden, in *Wilkins* v. *Jadis* (1831), 2 B. & Ad. 188, said: "A presentment to bankers out of the hours of their business is not sufficient; but in other cases the rule of law is that the bill must be presented at a reasonable hour; a presentment at twelve o'clock at night, when a person has retired to rest, would be unreasonable; but I cannot say that a presentment between seven and eight in the evening is not a presentment at a reasonable time."

When a banker requires to send bills to another banker for collection, they are usually forwarded a day or two before maturity, if domiciled at a bank; but, if not payable at a bank, they should be sent earlier, in case the collecting banker requires to write for instructions if he finds that expense will be incurred in presenting the bills at the place where made payable.

As to payment of a bill, see PAYMENT OF BILL.

A bill of itself does not operate as an assignment of funds in the hands of the drawee, but in Scotland where the drawee of a bill has in his hands funds available for the payment thereof, the bill operates as an assignment of the sum for which it is drawn in favour of the holder, from the time when the bill is presented to the drawee. (Section 53.) (See DRAWEE.)

With respect to presentment to an acceptor for honour, the Bills of Exchange Act provides—

"Section 67. (1) Where a dishonoured bill has been accepted for honour supra protest, or contains a reference in case of need, it must be protested for non-payment before it is presented for payment to the acceptor for honour, or referee in case of need.

"(2) Where the address of the acceptor for honour is in the same place where the bill is protested for non-payment, the bill must be presented to him not later than the day following its maturity; and where the address of the acceptor for honour is in some place other than the place where it was protested for non-payment, the bill must be forwarded not later than the day following its maturity for presentment to him.

"(3) Delay in presentment or non-presentment is excused by any circumstances which would excuse delay in presentment for payment or non-presentment for payment.

"(4) When a bill of exchange is dishonoured by the acceptor for honour it must be protested for non-payment by him."

A cheque must be presented for payment within a reasonable time. Section 74 of the Bills of Exchange Act provides—

"Subject to the provisions of this Act—

"(1) Where a cheque is not presented for payment within a reasonable time of its issue, and the drawer or the person on whose account it is drawn had the right at the time of such presentment as between him and the banker to have the cheque paid and suffers actual damage through the delay, he is discharged to the extent of such damage, that is to say, to the extent to which such drawer or person is a creditor of such banker to a larger amount than he would have been had such cheque been paid.

"(2) In determining what is a reasonable time regard shall be had to the nature of the instrument, the usage of trade and of bankers, and the facts of the particular case.

"(3) The holder of such cheque as to which such drawer or person is discharged shall be a creditor, in lieu of such drawer or person, of such banker to the extent of such discharge, and entitled to recover the amount from him."

A person receiving a cheque should present it for payment as soon as possible; unless presented within a reasonable time after its indorsement, the indorsers will be discharged. (See Section 45, above.) If a drawer suffers actual loss, as where a banker fails, through a cheque of his not having been presented within a reasonable time after its issue, the drawer, as stated in Section 74, is discharged to the amount of such loss. There has not been any definite decision as to what is a "reasonable time"; but Sir John Paget states that, in the absence of special circumstances, ten days or so would probably be held the

limit. After the "reasonable time" has elapsed, no person who takes the cheque can acquire or give a better title than that which the person from whom he took it had. (See OVERDUE CHEQUE.) It is to be noted that the effect of Section 74 is to exclude cheques, so far as the drawer is concerned, from the operation of Section 45.

The drawer of a cheque is liable (except under the conditions defined in Section 74) to the holder for six years from the date of the cheque, and a banker would be justified in paying a cheque within that period, but, in practice, a banker does not pay a cheque which is six (in some banks twelve) months old, unless it is confirmed by the drawer. (See STALE CHEQUE.)

When a cheque is paid to credit of an account at the same office as it is drawn upon, the banker may legally hold the cheque until the close of business of the following day before returning it unpaid, and he need not inform the customer at the time of receiving the cheque that there are insufficient funds to meet it. In practice, however, a banker pays or returns such a cheque on the day of receipt.

Where it is important to know as soon as possible whether a certain cheque will be paid or not, it is customary to send it direct, instead of through the Clearing House, and a stamped telegram form may be enclosed with a request to the banker on whom it is drawn to "advise fate" of the cheque. (See ADVISE FATE.)

It has been held that, where a foreign cheque is drawn upon a place where the banker has no agent, the custom in London of presenting the cheque by post is a due presentment (*Heywood* v. *Pickering* (1874), L.R. 9 Q.B. 428), but if payment is not received by return of post, the customer from whom the bank received the cheque should be advised of the fact.

If a cheque is presented by post by a stranger, it should be returned with a request that it be presented, according to custom, through a banker.

The presentment of a cheque in England does not operate as an assignment of funds in the drawer's account. Part payment of a cheque is never made; it is either paid fully or dishonoured. In Scotland, however, where a cheque is returned unpaid for "insufficient funds," any money in the drawer's account is transferred to a separate account, such as a suspense account, where it remains until the banker has evidence that the matter has been arranged. If the payee desires, the cheque may be retained by the banker in exchange for the amount attaching to it. (See Section 53 under DRAWEE.)

If there is a reasonable ground for suspecting that a cheque has been tampered with, a delay in payment may be made until a reference to the drawer clears away the doubt. (See *London Joint Stock Bank, Ltd.* v. *Macmillan and Arthur*, under PAYMENT OF CHEQUE.)

The presentment for payment of a promissory note is dealt with by Sections 86 and 87 as follows—

"86. (1) Where a note payable on demand has been indorsed, it must be presented for payment within a reasonable time of the indorsement. If it be not so presented the indorser is discharged.

"(2) In determining what is a reasonable time, regard shall be had to the nature of the instrument, the usage of trade, and the facts of the particular case.

"(3) Where a note payable on demand is negotiated, it is not deemed to be overdue, for the purpose of affecting the holder with defects of title of which he had no notice, by reason that it appears that a reasonable time for presenting it for payment has elapsed since its issue.

"87. (1) Where a promissory note is in the body of it made payable at a particular place, it must be presented for payment at that place in order to render the maker liable. In any other case, presentment for payment is not necessary in order to render the maker liable.

"(2) Presentment for payment is necessary in order to render the indorser of a bill liable.

"(3) Where a note is in the body of it made payable at a particular place, presentment at that place is necessary in order to render an indorser liable; but when a place of payment is indicated by way of memorandum only, presentment at that place is sufficient to render the indorser liable, but a presentment to the maker elsewhere, if sufficient in other respects, shall also suffice."

When a promissory note is made payable at a bank, the banker will be liable if he pays it in the event of the note bearing a forged indorsement. (See FORGERY, PAYMENT OF BILL.)

The presentment of a bill or cheque through a Clearing House has the same effect as presenting it direct to the banker on whom the cheque is drawn or where the bill is payable. (See BILL OF EXCHANGE.)

The holder of a bill, by presenting it for payment, does not warrant the genuineness of the bill or of any of the signatures thereon, or of any accompanying documents. In *Guaranty Trust Company of New York* v. *A. Hannay & Co.* (1918), 34 T.L.R. 427, Pickford, L.J., said that the position of the holder of a bill of exchange who presents it for payment is well expressed in a lecture by Dean Ames, of Harvard, when he says: "The attitude of the holder of a bill who presents it for payment is altogether different from that of a vendor. The holder is not a bargainer. By presentment for payment he does not assert, expressly or by implication, that the bill is his or is genuine." He, in effect, says: "Here is a bill which has come to me calling, by its tenor, for payment by you. I accordingly present it to you for payment, that I may either get the money or protest it for non-payment."

PREVENTION OF CORRUPTION ACT, 1906 (6 Edw. VII, c. 34). An Act for the better Prevention of Corruption.

[August 4, 1906.]

Punishment of Corrupt Transactions with Agents.

"1. (1) If any agent corruptly accepts or obtains, or agrees to accept or attempts to obtain, from any person for himself or for any other person, any gift or consideration as an inducement or reward for doing or forbearing to do, or for having after the passing of this Act done or forborne to do, any act in relation to his principal's affairs or business, or for showing or forbearing to show favour or disfavour to any person in relation to his principal's affairs or business; or

"If any person corruptly gives or agrees to give or offers any gift or consideration to any agent as an inducement or reward for doing or forbearing to do, or for having after the passing of this Act done or forborne to do, any act in relation to his principal's affairs or business or for showing or forbearing to show favour or disfavour to any person in relation to his principal's affairs or business; or

"If any person knowingly gives to any agent, or if any agent knowingly uses with intent to deceive his principal, any receipt, account, or other document in respect of which the principal is interested, and which contains any statement which is false or erroneous or defective in any material particular, and which to his knowledge is intended to mislead the principal;

he shall be guilty of a misdemeanour, and shall be liable on conviction on indictment to imprisonment, with or without hard labour, for a term not exceeding two years, or to a fine not exceeding five hundred pounds, or to both such imprisonment and such fine, or on summary conviction to imprisonment, with or without hard labour, for a term not exceeding four months, or to a fine not exceeding fifty pounds, or to both such imprisonment and such fine.

"(2) For the purposes of this Act the expression 'consideration' includes valuable consideration of any kind; the expression 'agent' includes any person employed by or acting for another; and the expression 'principal' includes an employer.

"(3) A person serving under the Crown or under any corporation or any municipal borough, county, or district council, or any board of guardians, is an agent within the meaning of this act.

Prosecution of Offences.

"2. (1) A prosecution for an offence under this Act shall not be instituted without the consent, in England of the Attorney-General or Solicitor-General, and in Ireland of the Attorney-General or Solicitor-General for Ireland.

22 & 23 *Vict. c.* 17.

"(2) The Vexatious Indictments Act, 1859, as amended by any subsequent enactment, shall apply to offences under this Act as if they were included among the offences mentioned in Section 1 of that Act.

"(3) Every information for any offence under this Act shall be upon oath.

"(4) The expenses of any prosecution on indictment under this Act shall be defrayed as in cases of indictment for felony.

"(5) A court of quarter sessions shall not have jurisdiction to inquire of, hear, and determine prosecutions on indictments for offences under this Act.

"(6) Any person aggrieved by a summary conviction under this Act may appeal to a court of quarter sessions.

Application to Scotland.

"3. This Act shall extend to Scotland, subject to the following modifications—

"(1) Section 2 shall not extend to Scotland:

"(2) In Scotland all offences which are punishable under this Act on summary conviction shall be prosecuted before the sheriff in manner provided by the Summary Jurisdiction (Scotland) Acts.

Short Title and Commencement.

"4. (1) This Act may be cited as the Prevention of Corruption Act, 1906.

"(2) This Act shall come into operation on the first day of January nineteen hundred and seven."

One object of this Act is to endeavour to stop the practice of taking and giving secret commissions, in consideration for which an agent does something contrary to the interests of his principal.

Where a broker shares with a banker, through whom the order has been received, his commission upon any sale or purchase of stocks or shares, it is now customary to place a notice upon the contract note that the commission is divided with the banker.

PREVENTION OF FRAUD (INVESTMENTS) ACT, 1939. This Act makes general provision for preventing fraud in connection with dealings in investments; regulates dealings in securities; restricts registration under the Industrial and Provident Societies Act, 1893; and extends the powers of the Registrar of Building Societies.

By Section 1 (1), no person shall carry on the business of dealing in securities except under the authority of a principal's licence issued by the Board of Trade. The same requirements apply to a servant or agent of any person carrying on such business, such agent receiving a representative's licence.

By Section 2 (1), exemptions from this requirement as to licences are given to members of recognised stock exchanges or recognised associations of dealers in securities, the Bank of England, statutory and municipal corporations, industrial, provident and building societies, and managers or trustees of any authorised unit trust scheme.

A principal's licence will only be granted against the deposit of £500 or the provision of an approved guarantee for that amount.

Section 15 provides for exemptions from the necessity of obtaining licences for certain persons. Banks have received exemptions under this section.

Penalties are prescribed for fraudulently inducing persons to invest money. (Section 12.)

The Act is administered by the Board of Trade under statutory rules. S.R. & O., No. 787, of 1939, deals with the conduct of business of licensed dealers; and S.R. & O., No. 119, of 1944, deals with applications for licences.

PRE-VICTORIAN GOLD COINS. Pre-Victorian sovereigns and half-sovereigns—that is, all gold coins coined before 1837—are not now legal tender. They are called in by the Coinage Act, 1889, and by Royal Proclamation they were declared to be no longer current coins after 28th February, 1891.

PRIMA FACIE. On the first view. The appearance of a matter, at first sight, before examining into it.

An example of the use of the words may be seen in Section 30, Bills of Exchange Act, 1882, under HOLDER IN DUE COURSE.

PRIMAGE. A certain percentage of the freight payable by a merchant to a shipowner in addition to the freight, e.g. freight 20s. per ton with 5 per cent primage.

PRIMARY SECURITY. (See MORTGAGE.)

PRIMOGENITURE. (Latin *Primogenitus*, first-born.)

The law by which the real property of a father or mother passed to the eldest son, in the event of the parent leaving no will.

Heirship was abolished after 1925. (See INTESTACY.)

PRINCIPAL. A word used when referring to the amount of a loan, to distinguish it from the interest payable thereon. When interest has been added to the debt, it becomes part of the principal.

The person who employs an agent to act for him is called the principal. (See AGENT).

PRIORITIES. After 1925 (except in the case of mortgages and charges of registered land, or of land in the jurisdiction of a local deeds registry), every mortgage affecting a legal estate in land, whether legal or equitable (not being a mortgage protected by the deposit of documents relating to the estate), shall rank according to its date of registration

as a land charge pursuant to the Land Charges Act, 1925. (Law of Property Act, 1925, Section 97.) (See LAND CHARGES.)

The effect of that Section is that a legal or equitable mortgage which is supported by a deposit of the deeds of the land does not require to be registered, and this shows the importance of holding the deeds. A mortgage not accompanied by the relative deeds requires to be registered, and ranks according to the date of its registration.

With respect to registered land, charges registered under the Land Registration Act, 1925, rank according to the order in which they are entered on the register and not according to the order in which they are created. Mortgages (other than registered charges) may, if made by deed, be protected by a caution in the register, and they will rank according to the date of the entry of the caution. (See LAND REGISTRATION.)

With respect to land in the jursidiction of a local registry, the registration of a memorial of any instrument transferring or creating a legal estate or charge by way of legal mortgage constitutes actual notice to all persons as from the date of registration. (See YORKSHIRE REGISTRY OF DEEDS.)

Prior to 1926 it was possible for a third mortgagee to obtain a transfer of the first mortgage and tack it to his third and thus obtain priority over the second mortgagee. Tacking, however, was abolished by the Law of Property Act, 1925, except as follows—

By Section 94, a prior mortgagee has the right to make further advances to rank in priority to subsequent mortgages (whether legal or equitable)—

"(*a*) If an arrangement has been made to that effect with the subsequent mortgagees; or

"(*b*) If he had no notice of the subsequent mortgage at the time he made the further advance; or

"(*c*) Whether or not he had such notice, where the mortgage imposes an obligation on him to make such further advances."

This provision applies whether or not the prior mortgage was made expressly for securing further advances.

Where the prior mortgage was made expressly for securing a current account or other further advances, the mortgagee shall not be deemed to have notice of a mortgage merely because it was registered as a land charge or in a local deeds registry, if it was not registered at the time when the original mortgage was created or when the last search (if any) was made by the mortgagee, whichever last happened.

This Section does not apply to charges registered under the Land Registration Act, 1925.

That Section is an important one to bankers. No person can proceed to deal with the legal estate in land without first ascertaining where the title deeds are, and so long as they are in the possession of a banker either with a legal mortgage or a memorandum of deposit or no charge, no one will be able in ordinary cases to secure priority to the banker.

The effect of being in possession of the documents of title is given in Section 13. (See that Section under MORTGAGE.)

A mortgage upon a ship takes priority from the date of production for registry, not from the date of the instrument. (See under SHIP.)

The priority of claims under any assignment of a life policy is regulated by the date on which notice is received by the insurance company. (See LIFE POLICY.)

(See DEBTS—ASSIGNMENT OF, MORTGAGE, NOTICE OF SECOND MORTGAGE, TACKING.)

PRIORITY NOTICE. The Law of Property (Amendment) Act, 1926, Section 4, as amended by the Land Charges Rules, 1940, provides that a priority notice may be lodged not later than fourteen days before a contemplated registration is to take effect. If formal application for registration is lodged within fourteen days of the date of the priority notice, the registration will date back and take effect as from the date the charge was given.

A priority notice may also be registered at the office of a local authority where a local land charge is contemplated. Where such a notice relates to a town-planning scheme requiring the approval of the Ministry of Health, the time limit for following up the priority notice with the registration of the actual charge is fourteen days after the sanction by the Ministry.

In the case of land with a registered title, a party proposing to take a charge over a title may give a priority notice on Form 18, accompanied by the land certificate.

If the charge is delivered for registration within fourteen days of the giving of the notice, it will take priority over any application or instrument that may have been delivered meanwhile.

PRIVATE BANK. A banking partnership, or firm, in which the number of partners must not exceed ten. The liability of each partner is unlimited.

A partnership of more than ten persons cannot be formed for the purpose of carrying on the business of banking, unless it is registered as a company under the Companies Act, 1948, or is formed in pursuance of some other Act of Parliament, or of letters patent. (See BANKING COMPANY.)

PRIVATE COMPANIES. Of the companies on the Companies Register at the end of 1953 the great majority were private ones, the figures being as follows—

Public Companies	Private Companies
16,769	269,320

The principal inducement to incorporation as a private company is possibly the advantage of limited liability compared with the far-reaching and unlimited liability attaching to the members of a firm. There are other but less apparent advantages, however; the power of one partner whilst going about the firm's business to bind his co-partners—often limited, it is true, by the articles of partnership—is exchanged for an arrangement whereby the powers of the directors are categorically limited by the company's articles. Again, trouble frequently arises when partners fall out, and however precise may be the terms of partnership deeds, arbitration or application to the Court is often resorted to; with companies, however, with voting powers clearly prescribed, the removal of directors for irregularity or misconduct is a straightforward matter laid down in the articles. The death of a sole trader who has not made provision for the carrying on of his business generally results in temporary difficulty, and the death, retirement, or bankruptcy of a partner involves the legal dissolution of the firm, often attended by embarrassment for the surviving partners; with a private company, however, there is unbroken continuity of business despite the death, bankruptcy, or retirement of any of its members. Then with the company there is single ownership of its assets undisturbed by changes of membership, whilst with a firm, change by retirement or death involves the re-vesting of the partnership assets in the new firm. To bind a firm by deed requires the co-operation of all partners, but a company can be bound by the affixing of its seal in the presence of, usually, two duly authorised officials. Lastly the statutory facilities given to a company to mortgage its assets by way of floating charge make it possible to raise money on its changing assets without restriction on its dealings with them, whereas a sole trader or firm cannot borrow on its book debts or stock in trade without the formality of an assignment or bill of sale. Care must be taken where the business of a sole trader or firm is converted into a limited company and thereafter accommodation is sought against the debenture of the new company. If a trader transfers his assets and liabilities to a limited company without the consent of each and every one of his creditors, the transaction may be interpreted as a fraudulent conveyance. A fraudulent conveyance is not necessarily a dishonest transaction, but one that defeats or delays a man's creditors, and does not imply a dishonest motive or a state of insolvency. Such a conveyance is an Act of Bankruptcy, and if within three months of its date a Petition and Receiving Order result, the Trustee's title will relate back to the time of the conveyance and render void the transaction. This will mean that the sale of the assets by the trader to the company can be set aside and such assets will revert to the Trustee in Bankruptcy, rendering void and valueless any debenture or charge given by the newly constituted company to the bank. (*In re Simms*, ex parte *A. E. Quaife* v. *W. Simms, Lloyds Bank Ltd.*, 1930.)

The private limited company was not contemplated by the legislature when the earlier Acts relating to joint stock companies were enacted, their purpose being to regulate the formation and conduct of joint stock enterprises which appealed to the investing public for their share capital. In the course of time, however, the advantages of incorporation and limited liability were appreciated by sole traders and partnerships.

By the beginning of this century companies consisting of a few members and finding their share capital without recourse to a public issue were being registered in large numbers and the Companies Act of 1900 made the first statutory distinction between public and private companies by differentiating between companies which invited the public to subscribe for shares and those which did not. The following Act of 1907, however, gave a precise and statutory meaning to the term "private company," which was repeated in the consolidating Act of 1908, re-enacted in the Companies Act, 1929, with a slight amendment introduced in the Act of 1913, and repeated in the Companies Act, 1948.

The Companies Act, 1948, provides for a special kind of private company known as an "exempt private company," intended for concerns that are really family and private

companies. (See under EXEMPT PRIVATE COMPANY.)

Section 28 of the Companies Act, 1948, defines a private company as one which by its articles

(*a*) restricts the right to transfer its shares;

(*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;

(*c*) prohibits any invitation to the public to subscribe for any shares or debentures of the company.

As regards (*a*) it is not necessary to have any specific restriction inserted in the articles, a general discretion to the directors to decline to register any transfer which they do not approve being sufficient. Such a restriction on transfer must apply to all classes of the company's shares however.

The usual article dealing with the restriction on transfer recites that "the Directors may at any time in their absolute and uncontrolled discretion, and without assigning any reason, decline to register any proposed transfer of shares."

In order to keep a company's shares within the family, the directors' general powers to reject a transfer are in some cases made specific, members being required to offer their holdings first of all to their fellow shareholders, arrangements being made for the fixing of the price at which the shares shall change hands.

A private company cannot take advantage in its articles of Section 83 of the Companies Act, 1948, and issue share warrants to bearer, for such warrants being transferable by mere delivery cannot be subject in their transfer to the veto of the directors.

Companies limited by guarantee may or may not have a share capital. The former type which is rare may be a public or private company, but a company limited by guarantee and not having a share capital cannot be a private company; for as has been seen, a private company must restrict the right to transfer its shares, and if a company has no shares, it cannot restrict the right to transfer them. Companies incorporated for charitable or educational purposes, with licence from the Board of Trade under Section 19 of the Companies Act, 1948, to omit the word "limited" from their title are frequently limited by guarantee without a share capital and hence cannot be private companies; if limited by shares, they are usually incorporated as private companies.

As regards limitation of membership, it is probably the exception to find a private company with a membership of anything like fifty, apart from its employees. Such companies are usually the outcome of family businesses and the shares are usually kept in the family by the operation of the articles quoted above.

Prior to the Act of 1913, private companies were placed in a quandary if an employee left the business and retained his shares, for the previous Act only referred to present employees. The Act of 1913, however, removed this difficulty by providing that past as well as present employees could hold shares in addition to the maximum of fifty shareholders.

Schemes for the acquisition of shares on favourable terms by employees are not uncommon and provide an excellent method of carrying out profit-sharing or co-partnership ideas.

Whilst there is a legal maximum as regards the membership of a private company, there is also a legal minimum, for Section 31 of the Companies Act, 1948, provides that if the number is reduced below two, and the business of the company is carried on for more than six months, the remaining member will be liable for the whole of the company's debts contracted during that period. Furthermore, Section 222 makes such a reduction a cause for winding up by the Court.

Section 28 (2) of the Companies Act, 1948, provides that 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.

The prohibition from inviting the public to subscribe for shares or debentures in no way restricts the right of a private company to invite existing members and debenture holders to subscribe for further shares and debentures, provided of course no renunciation rights in favour of outside parties are attached to the offer. In this connection it may be noted that there is no prohibition against a private company paying underwriting commission, provided that a statement in a prescribed form is filed with the Registrar disclosing the rate or amount of commission.

A company may lose its private character if it alters its articles so as to conflict with the three requisites laid down in Section 28,

or if without variation of the articles, it disregards them. (Section 30.) The result will be that the company will be regarded as a public company and penalties are imposed on its officers if the alteration of the articles is not followed within fourteen days by delivery to the Registrar of a prospectus or a statement in lieu of prospectus. There is discretionary power given to the Court, however, to give relief if the omission was inadvertent.

Conversely, a public company may convert itself into a private company by making the necessary alterations in its articles by means of a special resolution.

Certain privileges and exemptions enjoyed by a private company require noting.

Sundry formalities are waived with regard to the inception of a private company. The registration of the Memorandum and Articles of Association will be followed by the issue of the certificate of incorporation and the company can commence business forthwith without the necessity of a certificate of authority to commence business. By Section 109, a public company must not commence business or exercise any borrowing powers (other than by way of debenture issue) until such certificate is issued by the Registrar, and any contract made by the company before such date shall be provisional only and shall only become binding on the company on that date. The facility for a private company to turn itself into a public company by appropriate alteration of its articles would appear to open the way for directors of a company who propose to appeal to the public for the company's capital to avoid the formality of obtaining a certificate of authority to commence business by incorporation first as a private company, entering into certain binding and essential contracts, and then passing the necessary special resolution to turn the company into a public one.

Then there is no need to lodge with the Registrar a statement in lieu of prospectus (Section 48) and the restriction of Section 181 as to the validity of the appointment of a director by the articles or prospectus does not apply. Again, a private company may function with one director, whereas a public company must have a minimum of two directors. (Section 176.)

A private company is exempted from the provisions of Section 130 which provides that a general meeting of members (the statutory meeting) must be held not less than one month and not more than three months after the date on which the company is entitled to commence business. A statutory report must be sent to all members fourteen days before this meeting giving details of allotment of shares and of the officials of the company. A copy of such report must be lodged with the Registrar. The exemption of a private company from these requirements makes it useful in some cases for a company to be incorporated as a private one with a view to a public issue at a later date and meanwhile to lie dormant for an indefinite period.

If a private company is of the exempt type (see EXEMPT PRIVATE COMPANY), it does not have to include in its annual return to the Registrar of Companies under Section 124, a copy of its last balance sheet and auditors' report.

An exempt private company (*q.v.*) is not subject to the provisions of Section 161 as regards the employment of qualified auditors; neither is an officer or servant of the company, nor a person who is a partner of, or in the employment of an officer or servant of the company, disqualified from acting as the auditor of an exempt private company. (See AUDITORS.)

The annual return of a private company must include a certificate that no invitation has been issued to the public to subscribe for shares or debentures, and that any excess in membership over fifty is comprised of present or past employees.

PRIZE BOND. (See PREMIUM BOND.)

PRO RATA. Payment in proportion to the various interests concerned.

PROBATE. The document which is issued, with an official copy of a will, by the Probate Office to an executor. The principal registry of wills is at Somerset House, where the copy of a will may be seen on payment of one shilling. There are also District Registries where probate can be obtained of the wills of persons who were living in those districts at the time of their death, and a copy of a will which was proved in a District Registry may be seen in that District Registry, as well as at Somerset House, for a fee of one shilling. A foreign or colonial probate does not govern the deceased's estate in this country.

An official copy of the whole or any part of a will, or an official certificate of the grant of any letters of administration may be obtained from the Registry or District Registry where the will has been proved or the administration granted on the payment of certain fees.

Until probate is exhibited or, if no will, letters of administration are exhibited, a banker does not allow the balance of the deceased's account to be transferred, or any securities which he may have left with the banker to be removed. An executor must act or renounce within six months from the date of death.

When probate is exhibited a banker enters full particulars in the probate book for future reference, and he is expected to see that the gross value of the estate as stated in the probate is not less than the money in his hands belonging to the deceased.

An executor cannot recover in an action the balance which the banker is required to transfer, without the production of probate showing on its face that the gross value stated on the probate of the estate shown by the account in the affidavit is sufficient to cover the balance in question, and that such affidavit was duly stamped. (See Inland Revenue letter quoted in *Q.B.P.*, 8th Edition, No. 1081.)

In the event of a probate being lost, the court will issue a document called "exemplification of probate," which has the same effect as the original document.

Where probate or letters of administration have been revoked, the banker is protected in any payments he may have *bona fide* made by reason of the probate or letters.

Protection is given to persons acting on probate or administration by the Administration of Estates Act, 1925, Section 27—

"(1) Every person making or permitting to be made any payment or disposition in good faith under a representation shall be indemnified and protected in so dealing, notwithstanding any defect or circumstance whatsoever affecting the validity of the representation.

"(2) Where a representation is revoked, all payments and dispositions made in good faith to a personal representative under the representation before the revocation thereof are a valid discharge to the person making the same; and the personal representative who acted under the revoked representation may retain and reimburse himself in respect of any payments or dispositions made by him which the person to whom representation is afterwards granted might have properly made."

All conveyances of any interest in real or personal estate made to a purchaser by a person to whom probate or letters of administration have been granted are valid notwithstanding any revocation of representation. (Section 37 (1).)

"Representation" means probate of a will or grant of administration.

When a bank is appointed an executor, probate may be granted to the bank in its corporate name. By the Administration of Estates Act, 1925, Section 14—

"(1) Where a trust corporation is appointed an executor in a will, either alone or jointly with another person, the Court may grant probate to such corporation either solely or jointly with another person, as the case may require, and the corporation may act as executor accordingly.

"(2) Administration may be granted to any trust corporation either solely or jointly with another person, and the corporation may act as administrator accordingly.

"(3) Representation shall not be granted to a syndic or nominee on behalf of any trust corporation." (See SYNDIC, TRUST CORPORATION.)

See further provisions of the above Act under PERSONAL REPRESENTATIVES.

(See EXECUTOR, LETTERS OF ADMINISTRATION, PROBATE REGISTER, TRANSMISSION OF SHARES.)

PROBATE REGISTER. A book kept for the purpose of recording particulars of all probates or letters of administration exhibited to a banker. It should contain such particulars as the date when the Probate was granted and the name of the Registry, the date when exhibited and by whom, the names of the executors, the gross value of the estate, the date of the will, the powers of the executors, the amount of legacies, and generally a brief abstract of the contents of the will, and the reason why exhibited, e.g. current account customer, shareholder, etc. As to the letters of administration, where the will is not annexed, the particulars to be recorded will be the date when the letters were granted, and the name of the Registry, the date when exhibited and by whom, the names of the administrators and the gross value of the estate. Brief particulars should also be entered in the ledger against the customer's account and a reference given to the folio in the probate book for any further information required. The probate itself is usually indorsed with a

note that it has been exhibited, and the date.

PROCURATION. By the Stamp Act, 1891, the stamp duty is—

	£	s.	d.
PROCURATION, deed, or other instrument of. . . . (See PER PRO.)	10	0	

PRODUCTS. The interest calculations in the current account ledger, where the amount of the balance is multiplied by the number of days during which it continues undisturbed. The resulting product is the number of pounds for one day on which interest is to be allowed or charged. The products are commonly, though incorrectly, called "decimals." (See DECIMALS.)

PROFIT AND LOSS ACCOUNT. An account wherein all losses and expenses and all profits and revenue are collected and offset; the former being debited and the latter credited. The resultant balance represents the net profit or loss for the period concerned. (See also BALANCE SHEET, TRADING ACCOUNT.)

PROMISSORY NOTE. Part IV of the Bills of Exchange Act, 1882, is devoted to promissory notes. Section 83 defines a promissory note as follows—

"(1) A promissory note is an unconditional promise in writing made by one person to another signed by the maker, engaging to pay, on demand or at a fixed or determinable future time, a sum certain in money, to, or to the order of, a specified person or to bearer.

"(2) An instrument in the form of a note payable to maker's order is not a note within the meaning of this section unless and until it is indorsed by the maker.

"(3) A note is not invalid by reason only that it contains also a pledge of collateral security with authority to sell or dispose thereof.

"(4) A note which is, or on the face of it purports to be, both made and payable within the British Islands is an inland note. Any other note is a foreign note."

"Section 84. A promissory note is inchoate and incomplete until delivery thereof to the payee or bearer."

The following are specimens of promissory notes signed by one person—

£100 Leeds, *June* 1, 19 .

Stamp 1/-

Three months after date I promise to pay to John Brown or order the sum of One hundred pounds for value received.

JOHN JONES.

John Jones is the maker of that note, and John Brown is the payee.

£100 Leeds, *June* 1, 19 .

Stamp 1/-

On demand I promise to pay to the X & Y Banking Company, Limited, or order, at their Leeds office the sum of One hundred pounds with lawful interest for the same from the day of the date hereof.

Witness JOHN JONES.

A note which is written by John Brown in the form, "I, John Brown, promise to pay," etc., is valid, without his signature appearing at the foot, but variations from the usual forms should be discouraged.

If a note on demand does not include a promise to pay interest, interest cannot legally be enforced.

"Section 85. (1) A promissory note may be made by two or more makers, and they may be liable thereon jointly, or jointly and severally, according to its tenor.

"(2) Where a note runs, 'I promise to pay,' and is signed by two or more persons, it is deemed to be their joint and several note."

The following is a specimen of a joint and several promissory note—

£100 Leeds, *June* 1, 19 .

Stamp 1/-

Three months after date we jointly and severally promise to pay to the X & Y Banking Company, Limited, or order, at their Leeds office, the sum of One hundred pounds with lawful interest for the same from the date hereof.

JOHN BROWN.
JOHN JONES.

Witness to both signatures

A note drawn at so many months' notice has been held to be in accordance with the Bills of Exchange Act.

A promissory note may be payable by instalments. (*Kirkwood* v. *Carroll* (1903), 88 L.T. 52.)

When several persons sign a promissory

note, the note is usually worded "We jointly and severally promise to pay," and each person signing the note is liable for the full amount. If, however, the note is worded "we jointly promise to pay," it is a promise by the combined parties and each person is not individually liable for the whole amount. In a joint note all the makers must be sued together; but in a joint and several note each may be sued separately or they may all be sued jointly.

The regulations of the Bills of Exchange Act regarding the presentment for payment of a promissory note are given in Sections 86 and 87. (See PRESENTMENT FOR PAYMENT.)

To be valid, a promissory note must not be payable upon a contingency, such as the arrival of a ship.

Sections 88 and 89 provide as follows—

"88. The maker of a promissory note by making it—

"(1) Engages that he will pay it according to its tenor;

"(2) Is precluded from denying to a holder in due course the existence of the payee and his then capacity to indorse.

"89. (1) Subject to the provisions in this Part and, except as by this Section provided, the provisions of this Act relating to bills of exchange apply, with the necessary modifications, to promissory notes.

"(2) In applying those provisions the maker of a note shall be deemed to correspond with the acceptor of a bill, and the first indorser of a note shall be deemed to correspond with the drawer of an accepted bill payable to drawer's order.

"(3) The following provisions as to bills do not apply to notes; namely, provisions relating to—

"(*a*) Presentment for acceptance;

"(*b*) Acceptance;

"(*c*) Acceptance suprà protest;

"(*d*) Bills in a set.

"(4) Where a foreign note is dishonoured, protest thereof is unnecessary."

A promissory note made by a banker, payable to bearer on demand, is called a bank note. By the Currency and Bank Notes Act, 1928, the Bank of England was empowered to issue notes for £1 and for 10s. Prior to that Act, bank notes under £5 were prohibited in England. In Scotland and Ireland bank notes for £1 and upwards are issued. There is no limit as to the amount of other promissory notes.

A promissory note (except a bank note) cannot be re-issued. Bank notes may be re-issued as often as desired.

If a person is induced by fraud to sign a promissory note, he may, unless negligence is shown, be held not to be liable thereon. This was the decision in the case of *Lewis* v. *Clay* (1897), 14 T.L.R. 149, where a person was induced to sign under the belief that he was witnessing a signature.

A banker is liable if he pays a promissory note, domiciled with him, bearing a forged indorsement.

It frequently happens where money is borrowed by way of promissory note that another person also signs the note as surety for the borrower. If Brown borrows on a joint and several promissory note and Jones signs as surety for Brown, either of them is liable to pay the amount at maturity, or, if on demand, when the banker calls for repayment. If Brown does not pay the note at maturity Jones is not discharged from lack of notice of dishonour, but it is advisable to give such notice. If the note continues for more than six years and during that time the interest, as well as any instalments in reduction of the amount, is paid by Brown, the payments so made by Brown will not operate to keep the note alive as against Jones. If Jones has paid nothing and given no acknowledgment of the debt for six years from the date of the note, he will be discharged. It is necessary, therefore, before the six years are up, to obtain an acknowledgment from Jones (or from the maker who has not paid anything or confirmed the debt in any way). The best plan is to get a fresh note signed by both makers before the six years expire. Each time that a payment in reduction of a promissory note on demand is made, a paying-in slip should be signed in order to afford evidence of the payment. In the *Mutual Loan Fund Association* v. *Sudlow* (5 C.B., N.S., p. 453), Mr. Justice Byles said: "As between the makers and the payees of the note, at law both the makers are principals, and evidence would not be admissible to show that one of them signed the instrument as surety. But in equity, if it be made to appear that the lender was cognisant of the circumstances, you may show what the fact is. They become joint principals, or principal and surety according to the facts." (See LIMITATION ACT, 1939.)

If a loan is made to a society or institution upon a promissory note signed, say, by the members of the committee, the members

should sign as private individuals, without any reference to the name of the society or institution.

Where an advance is obtained from a banker upon a promissory note payable on demand, signed by the borrower and one or more makers (as sureties), the amount is usually debited to a separate loan account and the proceeds credited to the borrower's current account; if payable at so many months after date it is discounted. It frequently happens that when an after date promissory note is about due, it is arranged to renew it for a further period on the same signatures, and sometimes, for various reasons, it is impossible to obtain all the signatures to the new note, before the old one is due. In such a case the old note should not be cancelled but should be pinned to the new note till all the makers have signed, as in the event of any signature not being obtained the old note may be sued upon.

Where a promissory note signed, say, by Brown in favour of Jones is lodged as security for an overdraft to Jones, the note should be indorsed by Jones and a memorandum should be signed by him to show the purpose for which the note is given; and where a note is signed, say, by J. Brown and J. Jones, payable to the bank and is given as security for Brown's account, a memorandum should be signed by the two makers. The memorandum of deposit should state that the note is given for securing the sum and sums of money which shall from time to time be due or owing from the customer on whose behalf it is given, either alone or with any other person or persons either on the balance of his current account or otherwise, and that the moneys intended to be secured by the promissory note shall be recoverable thereupon, although the bank may have taken or may hereafter take any further security, or may have given time for the payment thereof.

The period of limitation begins to run on a promissory note payable on demand from the date of the note or the date of its issue, whichever is later.

A promissory note payable at a fixed period after date is not regarded as a continuing security for an account and to establish the contrary, evidence is required. In the case of *In re Boys, Eedes* v. *Boys* (1870), 10 L.R. Eq. 467, where a note payable eight months after date was given as security, Lord Romilly said: "I think that the burden of proof should lie upon those who seek to establish that it was intended to be a running security for the balance of the account from time to time."

In the case of a promissory note payable on demand, the liability exists as soon as the loan is made, and the words "on demand" may be neglected. "Express demand is not necessary in the case of a promissory note payable on demand; but it is otherwise when the debt is not present but to accrue as in the case of a note payable three months after demand." (*Bradford Old Bank* v. *Sutcliffe*, [1918] 2 K.B. 833.)

STAMP DUTY. A promissory note of any kind whatsoever (except a bank note) drawn, or expressed to be payable, or actually paid, or indorsed, or in any manner negotiated in the United Kingdom.

	s.	d.
When the amount or value of the money for which the note is made does not exceed £5 . . .		2

(Increased from 1d. to 2d. as from 1st September, 1918. See Finance Act, 1918, Section 36, under BILL OF EXCHANGE.)

	s.	d.
Exceeds £5 and does not exceed £10		2
" £10 " " £25		3
" £25 " " £50		6
" £50 " " £75		9
" £75 " " £100	1	0
" £100		
For every £100, and also for any fractional part of £100, of such amount or value . . .	1	0

On promissory notes payable on demand or at sight, or on presentation, or not exceeding three days after date or sight, the duty is according to the above table. (Bills of exchange payable in the same way only require 2d.)

The Stamp Act, 1891, provides—

"Section 33. (1) For the purposes of this Act the expression 'promissory note' includes any document or writing (except a bank note) containing a promise to pay any sum of money.

"(2) A note promising the payment of any sum of money out of any particular fund which may or may not be available, or upon any condition or contingency which may or may not be performed or happen, is to be deemed a promissory note for that sum of money."

On all inland promissory notes the stamp must be impressed.

The *ad valorem* duties upon promissory notes drawn or made out of the United Kingdom are to be denoted by adhesive stamps. (Stamp Act, 1891, Section 34 (2).) The adhesive stamps are to be Foreign Bill stamps. Every person into whose hands such a promissory note comes in the United Kingdom before it is stamped shall, before he transfers or negotiates or pays the note, affix thereto a proper adhesive stamp and cancel every stamp so affixed. (Section 35 (1).) An adhesive stamp is to be cancelled, by the person required by law to cancel it, by writing on or across the stamp his name or initials and the true date of his so writing.

The duty is calculated upon the amount of the note. If the note is drawn payable "with interest," the interest does not affect the amount of the stamp.

A promissory note drawn and payable abroad but negotiated in this country, is subject to the ordinary promissory note stamp duty. The reduced rate, as contained in Section 10, Finance Act, 1899 (see under BILL OF EXCHANGE), applies only to foreign bills of exchange.

A bill or note issued by the Bank of England or the Bank of Ireland is exempt from stamp duty.

Where the amount secured by a promissory note is payable by instalments, the duty is simply upon the one full amount, and not upon each separate instalment.

The various sections of the Stamp Act relating to the stamp duties on bills and promissory notes are given in the article BILL OF EXCHANGE. (See IOU, PRESENTMENT FOR PAYMENT, LIMITATION ACT, 1939.)

PROMPT. A commercial term signifying the period of time within which a payment of purchase money must be made. The period varies in different trades, and if goods are sold to be paid for in, say, three months' time, the agreement is called a three months' prompt. If the period is four months, it is a four months' prompt, and so on.

PROOF OF DEATH. This is generally given by production of probate or letters of administration or of the death certificate or burial certificate. A foreign death certificate should be confirmed by a notary or British Consul.

PROOF OF DEBTS. A proof of debt is the form which is filled up by a creditor setting forth the amount of his claim against the estate of a bankrupt.

When securities are held from a third party, proof may be made for the whole debt without any deduction for these securities. If third party securities are realised before the proof is made, the proceeds should be placed to a suspense account and proof be made for the full debt; but if the proceeds are placed to the credit of the bankrupt's account, then proof can be made only for the balance of the account.

A banker often delays proving for a debt until the trustee advertises the payment of a first dividend, up to which time a creditor has a right of proof.

The Bankruptcy Act, 1914, provides as follows—

Description of Debts Provable in Bankruptcy.

"30. (1) Demands in the nature of unliquidated damages arising otherwise than by reason of a contract promise, or breach of trust, shall not be provable in bankruptcy.

"(2) A person having notice of any act of bankruptcy available against the debtor shall not prove under the order for any debt or liability contracted by the debtor subsequently to the date of his so having notice.

"(3) Save as aforesaid, all debts and liabilities, present or future, certain or contingent, to which the debtor is subject at the date of the receiving order, or to which he may become subject before his discharge by reason of any obligation incurred before the date of the receiving order, shall be deemed to be debts provable in bankruptcy.

"(4) An estimate shall be made by the trustee of the value of any debt or liability provable as aforesaid, which by reason of its being subject to any contingency or contingencies, or for any other reason, does not bear a certain value."

A sum due from one party shall be set off against any sum due from the other party and the balance only shall be claimed or paid on either side respectively. (Section 31. See under SET OFF.)

In the case of partners the joint estate shall be applicable in the first instance in payment of their joint debts, and the separate estate of each partner shall be applicable in the first instance in payment of his separate debts. If there is a surplus of the separate estates it shall be dealt with as part of the joint estate. If there is a surplus of the joint estate it shall be dealt with as part of

the respective separate estates in proportion to the right and interest of each partner in the joint estate. (Section 33 (6).)

"Exceptions:—Joint creditors may receive dividends out of separate estates *pari passu* with separate creditors if there is no joint estate and if there is no solvent partner. Where a joint creditor is the petitioning creditor in a separate adjudication he may receive dividends out of the separate estate." (*Ringwood's Principles of Bankruptcy.*)

A proof of debt is limited to the amount of principal and interest due at the date of the receiving order. Interest subsequent to the receiving order cannot be added. (See INTEREST.)

If the proof is in respect of a bill of exchange, promissory note, or other negotiable instrument, on which the debtor is liable, such instrument, subject to any special order of the Court to the contrary, must be produced before the proof can be admitted either for voting or for dividend.

It should be noted (see Rule 13 below) that the trustee in bankruptcy may at any time redeem a security on payment to the creditor of the assessed value, but the secured creditor has the right to give the trustee notice, in writing, to elect whether he will, or will not, redeem the security at the assessed value. If the trustee fail to redeem it within six months, the security vests in the creditor, and he can thereafter sell the security and retain the proceeds even if it realises more than the debt. If notice be not given, the trustee's right to redeem continues.

The rules in the second Schedule of the Bankruptcy Act, 1914, with respect to proof of debts are as follow—

Proof in Ordinary Cases.

"1. Every creditor shall prove his debt as soon as may be after the making of a receiving order.

"2. A debt may be proved by delivering or sending through the post in a prepaid letter to the official receiver, or, if a trustee has been appointed, to the trustee, an affidavit verifying the debt.

"3. The affidavit 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.

"4. The affidavit 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 trustee may at any time call for the production of the vouchers.

"5. The affidavit shall state whether the creditor is or is not a secured creditor."

The following provision was inserted at the end of Rule 5 by the Bankruptcy (Amendment) Act, 1926—

"And if it is found at any time that the affidavit made by or on behalf of a secured creditor has omitted to state that he is a secured creditor, the secured creditor shall surrender his security to the official receiver or trustee for the general benefit of the creditors unless the Court on application is satisfied that the omission has arisen from inadvertence, and in that case the Court may allow the affidavit to be amended upon such terms as to the repayment of any dividends or otherwise as the Court may consider to be just."

"6. A creditor shall bear the cost of proving his debt, unless the Court otherwise specially orders.

"7. Every creditor who has lodged a proof shall be entitled to see and examine the proofs of other creditors before the first meeting, and at all reasonable times.

"8. A creditor proving his debt shall deduct therefrom all trade discounts, but he shall not be compelled to deduct any discount, not exceeding five per centum on the net amount of his claim, which he may have agreed to allow for payment in cash.

"9. Formal proof of debts in respect of contributions payable under the National Insurance Act, 1911, to which priority is given by this Act, shall not be required except in cases where it may otherwise be provided by rules under this Act.

Proof by Secured Creditors.

"10. If a secured creditor realises his security he may prove for the balance due to him, after deducting the net amount realised.

"11. If a secured creditor surrenders his security to the official receiver or trustee for the general benefit of the creditors, he may prove for his whole debt.

"12. If a secured creditor does not either realise or surrender his security, he shall, before ranking for dividend, state in his proof the particulars of his security, the date when it was given, and the value at which he assesses it, and shall be entitled to receive a dividend only in respect of the balance due to him after deducting the value so assessed.

"13. (*a*) Where a security is so valued the

trustee may at any time redeem it on payment to the creditor of the assessed value.

"(*b*) If the trustee is dissatisfied with the value at which a security is assessed, he may require that the property comprised in any security so valued be offered for sale at such times and on such terms and conditions as may be agreed on between the creditor and the trustee, or as, in default of such agreement, the Court may direct. If the sale be by public auction the creditor, or the trustee on behalf of the estate, may bid or purchase.

"(*c*) Provided that the creditor may at any time, by notice in writing, require the trustee to elect whether he will or will not exercise his power of redeeming the security or requiring it to be realised, and if the trustee does not, within six months after receiving the notice, signify in writing to the creditor his election to exercise the power, he shall not be entitled to exercise it; and the equity of redemption, or any other interest in the property comprised in the security which is vested in the trustee, shall vest in the creditor, and the amount of his debt shall be reduced by the amount at which the security has been valued.

"14. Where a creditor has so valued his security, he may at any time amend the valuation and proof on showing to the satisfaction of the trustee, or the Court, that the valuation and proof were made *bona fide* on a mistaken estimate, or that the security has diminished or increased in value since its previous valuation; but every such amendment shall be made at the cost of the creditor, and upon such terms as the Court shall order, unless the trustee shall allow the amendment without application to the Court.

"15. Where a valuation has been amended in accordance with the foregoing rule, the creditor shall forthwith repay any surplus dividend which he may have received in excess of that which he would have been entitled on the amended valuation, or, as the case may be, shall be entitled to be paid out of any money, for the time being available for dividend, any dividend or share of dividend which he may have failed to receive by reason of the inaccuracy of the original valuation, before that money is made applicable to the payment of any future dividend, but he shall not be entitled to disturb the distribution of any dividend declared before the date of the amendment.

"16. If a creditor after having valued his security subsequently realises it, or if it is realised under the provisions of Rule 13, the net amount realised shall be substituted for the amount of any valuation previously made by the creditor, and shall be treated in all respects as an amended valuation made by the creditor.

"17. If a secured creditor does not comply with the foregoing rules he shall be excluded from all share in any dividend.

"18. Subject to the provisions of Rule 13, a creditor shall in no case receive more than twenty shillings in the pound, and interest as provided by this Act.

Proof in Respect of Distinct Contracts.

"19. If a debtor was, at the date of the receiving order, liable in respect of distinct contracts as a member of two or more distinct firms, or as a sole contractor, and also as member of a firm, the circumstances that the firms are in whole or in part composed of the same individuals, or that the sole contractor is also one of the joint contractors, shall not prevent proof in respect of the contracts, against the properties respectively liable on the contracts.

Periodical Payments.

"20. When any rent or other payment falls due at stated periods, and the receiving order is made at any time other than one of those periods, the person entitled to the rent or payment may prove for a proportionate part thereof up to the date of the order as if the rent or payment grew due from day to day.

Interest.

"21. 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 receiving order and provable in bankruptcy, the creditor may prove for interest at a rate not exceeding four per centum per annum to the date of the order 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 the debtor notice that interest will be claimed from the date of the demand until the time of payment.

Debt Payable at a Future Time.

"22. A creditor may prove for a debt not payable when the debtor committed an

No. 72.—Proof of Debt. General Form.

THE BANKRUPTCY ACTS, 1914 & 1926.

(1) High Court of Justice, *or* County Court of———— holden at ———.

In the[1] Court of

In BANKRUPTCY. No. (*a*) of 1 .

RE (*a*)

I (*b*)

of

in the County of , make oath and say:

(*c*) That I am in the employ of the undermentioned creditor , and that I am duly authorised by to make this affidavit, and that it is within my own knowledge that the debt hereinafter deponed to was incurred, and for the consideration stated, and that such debt, to the best of my knowledge and belief, still remains unpaid and unsatisfied.

(*d*) That I am duly authorised under the seal of the Company hereinafter named, to make the Proof of Debt on its behalf.

That the said w , at the date of the Receiving Order, viz:—the day of 1 , and still justly and truly indebted to (*e*)————————

in the sum of pounds shillings and pence for (*f*) as shown by the* {Account indorsed hereon / Account hereto annexed marked "A"} for which sum or any part thereof I say that I have not nor hath (*g*) or any person by (*h*) order to my knowledge or belief for (*h*) use had or received any manner of satisfaction or security whatsoever, save and except the following (*i*):—

Date.	Drawer.	Acceptor.	Amount.	Due date.

Sworn at
in the County of
this day of 19 ,
Before me

Deponent's Signature.

Admitted to vote for £ : :
this day of 19 .
Official Receiver.

Admitted to rank for dividend for £ : :
this day of 19 .
Trustee.

Where the debt proved for exceeds £2, a 1s. 6d. Bankruptcy Stamp must be affixed here, or a postal order for 1s. 6d. be sent to the Official Receiver, as otherwise the proof cannot be admitted. Postage Stamps cannot be accepted.

NOTE—The Stamp must not be defaced by the Creditor.

(*a*) Here insert the number of matter and the name of Debtor as given on the notice of meeting.
(*b*) Fill in full name, address, and occupation of deponent.

If proof made by Creditor strike out clauses (*c*) and (*d*).
If made by Clerk of Creditor strike out (*d*).
If by Clerk or Agent of Company strike out (*c*).

(*e*) Insert "*me* and to C. D. "and E. F., my co-partners "in trade," if any, *or if by Clerk, insert name, address and description of principal.*
NOTE.—*In case of a firm, the names of all the partners must be set out in full.*
Debt £ : :
Contra £ : :
£

NOTE THIS.
(*f*) *State consideration* [as—Goods sold and delivered by me] [and my said partner] to him [or them] at his [or their] request between the dates of [or monies advanced by me in respect of the undermentioned Bill of Exchange] *or as the case may be.*
* Strike out the words not applicable.
(*g*) "My said partners or "any of them" *or* "the "above named Creditor," *as the case may be*
(*h*) "My" *or* "our" *or* "their" *or* "his" *as the case may be.*
(*i*) Here state the particulars of all Securities held, and where the Securities are on the property of the Debtor, assess the value of the same, **and if any Bills or other Negotiable Securities be held, specify them in the Schedule. N.B.—Bills or other Negotiable Securities must be produced before the proof can be admitted.**

You should attend carefully to these directions.

The Proof cannot be admitted for voting at the First Meeting unless it is properly completed and lodged with the Official Receiver before the time named in the Notice convening such Meeting.

(Credit should be given for contra accounts.)

If space is not sufficient let the particulars be annexed, but where the particulars are on a separate sheet of paper the same must be marked by the person before whom the affidavit is sworn, thus:—*In Bankruptcy—This is the account marked with the letter "A" referred to in the annexed proof of debt made by in re sworn before me this day of* 19 .

(*Signed*)

Commissioner or Officer administering Oath.

DATE.	CONSIDERATION.	AMOUNT.	REMARKS. * The vouchers (if any) by which the amount can be substantiated should be set out here.

Signature of Deponent

act of bankruptcy 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 pounds 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.

Admission or Rejection of Proofs.

"23. The trustee shall examine every proof and the grounds of the debt, and in writing admit or reject it, in whole or in part, or require further evidence in support of it. If he rejects a proof he shall state in writing to the creditor the grounds of the rejection.

"24. If the trustee thinks that a proof has been improperly admitted, the Court may, on the application of the trustee, after notice to the creditor who made the proof, expunge the proof or reduce its amount.

"25. If a creditor is dissatisfied with the decision of the trustee in respect of a proof, the Court may, on the application of the creditor, reverse or vary the decision.

"26. The Court may also expunge or reduce a proof upon the application of a creditor if the trustee declines to interfere in the matter, or, in the case of a composition or scheme, upon the application of the debtor.

"27. For the purpose of any of his duties in relation to proofs, the trustee may administer oaths and take affidavits.

"28. The official receiver, before the appointment of a trustee, shall have all the powers of a trustee 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."

Where a banker is a holder of a bill and the acceptor and drawer become bankrupt, he may claim upon both estates for the full amount of the bill, but he must not retain more than the amount of the bill. If a dividend has already been declared on one of the estates before sending in a proof of debt on the other estate, the banker's claim on the second estate will be only for the balance after crediting the dividend declared. If there is any balance standing to the customer's credit it will be retained by the banker against the bill.

The fee, payable by means of stamps,

upon a proof of debt above £2 (other than proof for workmen's wages), is one shilling and sixpence (as from 1st September, 1923) and the stamp may be impressed or adhesive. The adhesive stamp must be a "bankruptcy" stamp. An adhesive stamp shall be "cancelled by the various court or other officials by perforation or in such manner as the Commissioners of Inland Revenue may from time to time direct." (Stamp Order, 1890.)

An affidavit of proof of debt may be sworn before an assistant official receiver or any clerk of an official receiver duly authorised in writing by the Court or the Board of Trade in that behalf. (Bankruptcy Rules.) The trustee may administer oaths and take affidavits. (See Rule 27, above.) Section 140 of the Bankruptcy Act, 1914, provides—

"Subject to general rules, any affidavit to be used in a bankruptcy court may be sworn before any person authorised to administer oaths in the High Court, or in the Court of Chancery of the county palatine of Lancaster, or before any registrar of a bankruptcy court, or before any officer of a bankruptcy court authorised in writing in that behalf by the judge of the Court, or before a justice of the peace for the county or place where it is sworn, or, in the case of a person residing in Scotland or in Ireland, before a judge ordinary, magistrate, or justice of the peace, or, in the case of a person who is out of the United Kingdom, before a magistrate or justice of the peace or other person qualified to administer oaths in the country where he resides (he being certified to be a magistrate or justice of the peace, or qualified as aforesaid, by a British minister or British consul, or by a notary public)."

In dealing with the proof of a debt, when the debt includes interest, see Section 66, Bankruptcy Act, 1914, under INTEREST.

Any alteration or interlineation must be authenticated by the initials of the person making the affidavit, and in the case of erasure the words or figures must be rewritten and signed or initialed in the margin by the person making it. (See BANKRUPTCY.)

PROPERTY. (See COPYHOLD, FREEHOLD, LEASEHOLD, PERSONAL ESTATE, REAL ESTATE.)

PROPERTY TAX. The popular name for income tax upon property in lands and buildings. (See INCOME TAX.)

PROSPECTUS. A prospectus is defined in Section 455 of the Companies Act, 1948, as "any prospectus, notice, circular, advertisement, or other invitation, offering to the public for subscription or purchase any shares or debentures of a company."

A form of application for shares is usually sent out along with the prospectus. (See APPLICATION FOR SHARES.) This form is filled up by anyone desiring shares and is forwarded, along with the amount payable on application, to the company or its bankers. When the shares are allotted by the company a letter of allotment is sent to the applicant. (See LETTER OF ALLOTMENT.)

A company should always obtain a banker's permission before putting his name in a prospectus, for although the insertion of a banker's name does not in any way act as a guarantee or a recommendation to the public, there is no doubt that it may have a considerable influence in moving many persons to take up the investment.

The Companies Act, 1948, provides, in the Fourth Schedule—

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—

"(i) 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:

"(*a*) 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;

"(*b*) 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;

"(*c*) the repayment of any moneys borrowed by the company in respect of any of the foregoing matters;

"(*d*) working capital; and

"(ii) 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 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 reference 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."

For space-saving reasons, the contents of the memorandum of association need not now be included in the prospectus.

The written consent of any expert whose report appears in the prospectus must be

given before the issue of such prospectus, which must contain a statement that such consent has been given and has not been withdrawn. (Section 40.)

A prospectus must not be issued unless before, or on the date of its publication, a dated copy has been lodged with the registrar of companies signed by every person named therein as a director or proposed director or by his agent authorised in writing. It must be accompanied by the written consents of any experts as provided for in Section 40 and copies of any contracts as require mention in the prospectus in accordance with paragraph 14 of the Fourth Schedule (see above).

The prospectus must state that a copy has been duly delivered for registration and must specify the documents required to be lodged or indorsed on the prospectus as above. (Section 41.)

Where a company allots or agrees to allot any shares in, or debentures of, the company with a view to all or part being offered for sale to the public, any document by which the offer for sale is made shall be deemed to be a prospectus issued by the company subject to all the provisions for the issue of a prospectus. (Section 45.)

In order to give interested parties time to scrutinise the prospectus after its publication, it is provided that the company shall not proceed to allotment earlier than the third day after issue (excluding Saturdays, Sundays, and Bank Holidays). (Section 50.)

Applications will be irrevocable until the end of the third day after the date of opening the subscription lists. (Section 50.)

Where a prospectus states that application has or will be made for permission to deal in the issue on any Stock Exchange, any allotment made shall be void if permission to deal has not been applied for before the third day after the issue of the prospectus or if permission is refused before the end of three weeks from the date of closure of the subscription lists or such longer period, not exceeding six weeks, as may be notified by the Stock Exchange.

In cases where permission to deal has not been applied for or has been refused, application moneys are to be returned forthwith to subscribers.

If application for permission to deal is under consideration by the Council of the Stock Exchange, application moneys must not be returned until twenty-one days from the closing of the lists or such longer period not exceeding six weeks as the Stock Exchange may determine. If during such period leave to deal is refused, the application moneys must be returned to the applicants. (Section 51.)

So long as a company is under liability to return application moneys, such moneys must be kept in a separate bank account. (Section 51.)

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."

PROTEST. A protest is the official certificate given by a notary public respecting the dishonour of a bill of exchange by non-acceptance or non-payment. When a bill is dishonoured, a holder may hand it to a notary public to be protested. The notary presents it again to the drawee or to the acceptor, and if acceptance or payment is

still not obtained, a note of the facts is made upon the bill, or upon a slip attached to the bill, which act constitutes a "noting" of the bill. (See NOTING.) The official certificate, or protest, may be extended subsequently, as of the date of the noting. The bill may be noted on the day of its dishonour, and must be noted not later than the next succeeding business day.

The following is a specimen (taken from Brooke's *Notary*) of a protest—

PROTEST OF A BILL ON NON-PAYMENT.

On the day of one thousand nine hundred and , I, R. B. Public Notary duly authorised, admitted and sworn, practising in L——, in the County of L——, and United Kingdom of Great Britain and Ireland, at the request of C. D. of L—— (or of "the holder," or "the bearer" as the case may be), did exhibit the original bill of exchange, whereof a true copy is on the other side written (or did cause due and customary presentment to be made of the original bill of exchange whereof a true copy is on the other side written), unto E. F. (or as the case may be, unto a clerk in the counting-house of E. F.) the person upon whom the said bill is drawn (and by whom the same is accepted, if the bill have been accepted) and demanded payment thereof (or payment being thereupon demanded), and he answered that it would not be paid.

Wherefore, I, the said Notary, at the request aforesaid, have protested, and by these presents do protest against the drawer of the said bill, and all other parties thereto, and all others concerned, for all exchange, re-exchange, and all costs, damages, and interest present and to come, for want of payment of the said bill.

Seal

Which I attest,
R. B.
Notary Public, L——.

It is not necessary to note or protest inland bills in order to preserve the recourse against the drawer or indorsers, though they are sometimes noted, but, in the case of foreign bills, it is necessary to have them noted and protested, unless the remitter of the bills sends instructions that they are not to be noted or protested. A bill drawn in Eire and payable in England is a foreign bill within the meaning of the Bills of Exchange Act, and if dishonoured by non-acceptance or non-payment must be noted or protested. (See under FOREIGN BILL.)

Bills must first be protested if they are to be accepted for honour or paid for honour. (See ACCEPTANCE FOR HONOUR, PAYMENT FOR HONOUR.)

Where an acceptor has become bankrupt or has disappeared, a bill is sometimes protested "for better security." In such a case the bill would be presented at the address of the acceptor (not at the bank where it may have been accepted payable) and better security asked for, and be protested accordingly.

The rules regarding the noting or protest of a bill are contained in Section 51 of the Bills of Exchange Act, 1882—

"(1) Where an inland bill has been dishonoured it may, if the holder think fit, be noted for non-acceptance or non-payment, as the case may be; but it shall not be necessary to note or protest any such bill in order to preserve the recourse against the drawer or indorser.

"(2) Where a foreign bill, appearing on the face of it to be such, has been dishonoured by non-acceptance it must be duly protested for non-acceptance, and where such a bill, which has not been previously dishonoured by non-acceptance, is dishonoured by non-payment it must be duly protested for non-payment. If it be not so protested the drawers and indorsers are discharged. Where a bill does not appear on the face of it to be a foreign bill, protest thereof in case of dishonour is unnecessary.

"(3) A bill which has been protested for non-acceptance may be subsequently protested for non-payment.

"(4) Subject to the provisions of this Act, when a bill is noted or protested, *it may be noted on the day of its dishonour, and must be noted not later than the next succeeding business day.* [As amended by the Bills of Exchange (Time of Noting) Act, 1917.] When a bill has been duly noted, the protest may be subsequently extended as of the date of the noting.

"(5) Where the acceptor of a bill becomes bankrupt or insolvent or suspends payment before it matures, the holder may cause the bill to be

protested for better security against the drawer and indorsers.

"(6) A bill must be protested at the place where it is dishonoured: Provided that—

"(*a*) When a bill is presented through the post office, and returned by post dishonoured, it may be protested at the place to which it is returned and on the day of its return if received during business hours, and if not received during business hours, then not later than the next business day:

"(*b*) When a bill drawn payable at the place of business or residence of some person other than the drawee, has been dishonoured by non-acceptance, it must be protested for non-payment at the place where it is expressed to be payable, and no further presentment for payment to, or demand on, the drawee is necessary.

"(7) A protest must contain a copy of the bill, and must be signed by the notary making it, and must specify—

"(*a*) The person at whose request the bill is protested:

"(*b*) The place and date of protest, the cause or reason for protesting the bill, the demand made, and the answer given, if any, or the fact that the drawee or acceptor could not be found.

"(8) When a bill is lost or destroyed, or is wrongly detained from the person entitled to hold it, protest may be made on a copy or written particulars thereof.

"(9) Protest is dispensed with by any circumstance which would dispense with notice of dishonour. Delay in noting or protesting is excused when the delay is caused by circumstances beyond the control of the holder, and not imputable to his default, misconduct, or negligence. When the cause of delay ceases to operate the bill must be noted or protested with reasonable diligence."

Section 93 of the Act defines when noting is equivalent to protest—

"For the purposes of this Act, where a bill or note is required to be protested within a specified time or before some further proceeding is taken, it is sufficient that the bill has been noted for protest before the expiration of the specified time or the taking of the proceeding; and the formal protest may be extended at any time thereafter as of the date of the noting."

Where a notary public is not accessible, Section 94 of the Act makes provision for a bill to be protested by a householder or substantial resident of the place, in the presence of two witnesses. The words of the Section are—

"Where a dishonoured bill or note is authorised or required to be protested, and the services of a notary cannot be obtained at the place where the bill is dishonoured, any householder or substantial resident of the place may, in the presence of two witnesses, give a certificate, signed by them, attesting the dishonour of the bill, and the certificate shall in all respects operate as if it were a formal protest of the bill.

"The form given in Schedule I to this Act may be used with necessary modifications, and if used shall be sufficient."

"SCHEDULE I.

Form of protest which may be used when the services of a notary cannot be obtained.

Know all men that I, A B (householder), of in the county of , in the United Kingdom, at the request of C D, there being no notary public available, did on the day of , 1.. , at , demand payment (or acceptance) of the bill of exchange hereunder written, from E F, to which demand he made answer (state answer, if any), wherefore I now, in the presence of G H and J K, do protest the said bill of exchange.

Signed A B

G H } Witnesses.
J K }

N.B.—The bill itself should be annexed, or a copy of the bill and all that is written thereon should be underwritten."

It is to be observed that G H and J K are merely witnesses to A B's signature, not witnesses to the presentment of the bill.

When this form of protest is used it is not preceded by "noting." The Act does not specifically refer to "noting," but the above Section enacts that the certificate shall in all respects operate as if it were a formal protest of the bill. No stamp duty is payable on a householder's protest (see below).

A holder of a dishonoured bill may recover from any party liable on the bill the expenses of noting, or, when protest is necessary, and the protest has been extended, the expenses of protest. (Section 57 (1) (*c*).) Where payment is made to a notary when he presents the bill, the acceptor should pay the notary's charges, though it has been decided that, in such a case, the notary's charges cannot be enforced by law against the acceptor.

Where a foreign bill has been accepted or paid as to part, it must be protested as to the balance.

Where a foreign promissory note is dishonoured protest thereof is unnecessary. (Section 89 (4).)

The date on which bills are to be protested in foreign countries depends upon the laws of those countries.

Stamp duty on protests was abolished by the Finance Act, 1949.

(See BILL OF EXCHANGE, NOTING.)

PROVABLE DEBTS. Those debts which a creditor is entitled to prove against a bankrupt's estate. (See PROOF OF DEBTS.)

PROVISION FOR BAD AND DOUBTFUL DEBTS. (See BAD AND DOUBTFUL DEBTS.)

PROVISIONAL CERTIFICATE. The certificate which is issued to a person who has agreed to take up some new bonds which are being issued. When the various instalments have been paid, the bonds are issued in exchange for the provisional or scrip certificate. (See SCRIP CERTIFICATE.) A provisional certificate may also be issued for new shares until the share certificate is ready for delivery.

PROXY. The person who acts for another, also the document appointing him. The articles of association of a company usually provide for votes being given by proxy.

The articles should be consulted on all questions regarding the votes of members.

The instrument appointing a proxy may be in the following form or in any other form which the directors shall approve—

COMPANY, LIMITED.

I of in the county of being a member of the Company, Limited, hereby appoint of as my proxy to vote for me and on my behalf at the [ordinary *or* extraordinary, *as the case may be*] general meeting of the company to be held on the day of and at any adjournment thereof.

Signed this day of

Articles of association usually provide, with regard to joint registered holders of shares, that only the member whose name stands first on the register shall be entitled to vote in person or by proxy in respect of such shares. (See Regulation 63 of Table A under VOTES.) A proxy, in that case, would be given by the first registered holder.

Section 139 of the Companies Act, 1948, gives power to a company which is a member of another company, by resolution of the directors, to authorise any of its officials or any other person to act as its representative at any meeting of the other company, or at any meeting of any creditors of the other company, and to exercise the same powers on behalf of the company which he represents as if he were an individual shareholder, creditor, or holder of debentures of the other company. (See MEETINGS.)

A proxy appointed by a member of a private company to attend and vote at meeting of the company shall have the same right as the member to speak at the meeting. (Section 136 (1).)

On a poll taken at a meeting, a member entitled to more than one vote need not, if he votes, use all his votes or cast all the votes he uses, the same way. (Section 138.) This solves the difficulties of nominee companies and corporate trustees, who may hold shares on account of a multitude of persons. Such bodies can now take the instructions of the several interested parties as to the way the particular votes are to be cast.

The instrument appointing a proxy must be deposited at the registered office of the company within the time specified in the articles, which must not be more than forty-eight hours before the meeting. (Section 136 (3).)

Proxies are exempt from stamp duty by the Finance Act, 1949.

(See also MEETINGS, COMPANIES.)

PUBLIC ACCOUNT. By Section 18 of the Exchequer and Audit Departments Act, 1866 (29 & 30 Vict. c. 39)—

"The Treasury may, from time to time, determine at what banks accountants shall keep the public moneys entrusted to them; and they may also determine what accounts so opened in the names of public officers or accountants in the books of the Bank of England, or the Bank of Ireland, or of any other bank, shall be deemed public accounts; and on the death, resignation, or removal of any such public officers or accountants the balances remaining at the credit of such accounts shall, upon the appointment of

their successors, unless otherwise directed by law, vest in and be transferred to the public accounts of such successors at the said banks, and shall not, in the event of the death of any such public officers or accountants, constitute assets of the deceased, or be in any manner subject to the control of their legal representatives."

By the Stamp Act, 1891, the following are exempt from stamp duty—

Draft or order drawn upon any banker in the United Kingdom by an officer of a public department of the State for the payment of money out of a public account.

Bill drawn in the United Kingdom for the sole purpose of remitting money to be placed to any account of public revenue. (See list of exemptions under BILL OF EXCHANGE.) (See LOCAL AUTHORITIES.)

PUBLIC COMPANY. Any seven or more persons associated for any lawful purpose may by subscribing their names to a memorandum of association and complying with the law regarding registration, form an incorporated company, with or without limited liability. (See MEMORANDUM OF ASSOCIATION.) When the company advertises itself by a prospectus and invites the public to subscribe for its shares, it is a public company. A private company may, under certain conditions, turn itself into a public company. (See PRIVATE COMPANY.) A public company must file, with the registrar of companies, a prospectus or statement before allotting any shares or debentures. (See PROSPECTUS.) (See COMPANIES.)

PUBLIC EXAMINATION OF DEBTOR. When a receiving order has been made, the debtor must, within three days, if the order is made on the debtor's petition, or within seven days, if made upon the petition of a creditor, submit a statement of his affairs to the official receiver. (See RECEIVING ORDER.)

Section 15 of the Bankruptcy Act, which deals with the public examination of a debtor, is as follows—

"(1) Where the Court makes a receiving order, it shall, save as in this Act provided, hold a public sitting, on a day to be appointed by the Court, for the examination of the debtor, and the debtor shall attend thereat and shall be examined as to his conduct, dealings, and property.

"(2) The examination shall be held as soon as conveniently may be after the expiration of the time for the submission of the debtor's statement of affairs.

"(3) The Court may adjourn the examination from time to time.

"(4) Any creditor who has tendered a proof, or his representative authorised in writing, may question the debtor concerning his affairs and the causes of his failure.

"(5) The official receiver shall take part in the examination of the debtor; and for the purpose thereof, if specially authorised by the Board of Trade, may employ a solicitor with or without counsel.

"(6) If a trustee is appointed before the conclusion of the examination, he may take part therein.

"(7) The Court may put such questions to the debtor as it may think expedient.

"(8) The debtor shall be examined upon oath, and it shall be his duty to answer all such questions as the Court may put or allow to be put to him. Such notes of the examination as the Court thinks proper shall be taken down in writing, and shall be read over either to or by the debtor and signed by him, and may thereafter, save as in this Act provided, be used in evidence against him; they shall also be open to the inspection of any creditor at all reasonable times.

"(9) When the Court is of opinion that the affairs of the debtor have been sufficiently investigated, it shall by order declare that his examination is concluded, but such order shall not be made until after the day appointed for the first meeting of creditors." (See BANKRUPTCY.)

PUBLIC FUNDS. (See NATIONAL DEBT.)

PUBLIC TRUSTEE. The Public Trustee Act, 1906, which came into operation on 1st January, 1908, was passed with the express object of enabling the public to guard against the risks and inconveniences which are incidental to the employment of private individuals in trust matters. On and after the first day of January, 1908, the public may (instead of selecting a private individual) secure the services of the Public Trustee. In the Public Trustee, the public will have an executor or trustee, who will never die, never leave the country, and never become incapacitated, and whose responsibility is guaranteed by the Consolidated Fund of the United Kingdom.

CAPACITIES IN WHICH THE PUBLIC TRUSTEE

MAY ACT.—The Public Trustee is authorised, if duly appointed, to act in any of the following capacities—

I. *As Executor or as Administrator of Estates.*

(1) As Executor and/or Trustee (and guardian of infants).
(2) As Administrator in place of Executors appointed by Will or where there is no Executor.
(3) As Administrator of intestates' Estates, i.e. where there is no Will.

II. *As Trustee.*

(1) As Trustee of a new Settlement.
(2) As Trustee under a Declaration of Trust.
(3) As Trustee of an old Settlement, e.g. Marriage Settlement; or Settlement made by Will.
(4) As Custodian Trustee.
(5) As Trustee by appointment in a Will.

III. *As Administrator of Estates of small value.*

IV. *As investigator and auditor of the accounts of trusts not administered by the Public Trustee.*

The Public Trustee has, in addition to certain privileges conferred upon him by the Act, all the same powers, duties, and liabilities, and is entitled to the same rights and immunities, and is subject to the control and orders of the Court, as a private trustee acting in the same capacity. The Public Trustee may, however, decline either absolutely, or except on conditions prescribed by the rules, to accept any trust, but he cannot decline on the ground only of the small value of the property. He may not accept any trust under a deed of arrangement for the benefit of creditors, nor for the administration of any estate known or believed by him to be insolvent, nor made solely by way of security for money, nor exclusively for religious or charitable purposes.

WILLS.—The Public Trustee may be appointed even although the will was made or came into operation prior to January 1, 1908, either alone or jointly with any other person or persons as executor, or as trustee, or as executor and trustee of a will, and either as ordinary trustee or as custodian trustee. He may be appointed in the simplest form possible, e.g. "I appoint the Public Trustee as the executor and trustee of this my will."

The substitution of the name of the Public Trustee in a will already in existence for the names of the executors and trustees named therein, or the addition of his name, can be effected by a simple codicil.

The Public Trustee's acceptance of the office need not be invited at the time the will or codicil is made, although it is desirable that this course should be adopted when the trust is of an unusual nature.

On the death of the testator it is the duty of the co-executor, if any, to inquire of the Public Trustee if he is prepared to act. On acceptance of office he executes an instrument of consent.

Even after probate has been obtained an executor may, with the sanction of the Court, renounce in favour of the Public Trustee.

The Public Trustee may be appointed either as an original trustee of a settlement, or as a new trustee in an existing settlement when a vacancy arises in the trusteeship by death, or by one or more of the trustees desiring to retire. In the case of an existing settlement the persons entitled to appoint the Public Trustee are the person or persons having power to do so under the settlement, or if there are no such persons, then the continuing or surviving trustees or their executors or administrators. Inquiry should first be made if he will accept office, and notice should be sent to all persons beneficially interested to ascertain if they are agreeable to the appointment.

Private trustees may retire, either singly or together, in favour of the Public Trustee.

The Public Trustee may be appointed custodian trustee. On appointment, all securities and documents of title relating to the trust property, which would otherwise have remained in the custody of the ordinary trustees, are to be transferred to the Public Trustee; but the management of the trust property, as distinct from the custody of the securities, is to remain in the hands of the ordinary or managing trustees.

Any person or persons interested in an estate, the gross capital value whereof can be proved to the satisfaction of the Public Trustee to be under £1,000, may apply in writing to the Public Trustee to administer the estate, and thereupon, unless he sees good reason to the contrary, if it appears to him that the persons beneficially entitled are persons of small means, the Public Trustee will undertake the administration.

Under the Public Trustee Act a trustee or beneficiary can obtain an audit of trust accounts without applying to the Court. Formal application must be made to the Public Trustee for the audit.

As a rule, the Public Trustee may not agree to act as ordinary trustee where the trust involves the carrying on of a business, except where the carrying on of the business has for its ultimate object the sale or winding up of the business. But if he is to act merely as custodian trustee the carrying on of the business is immaterial, but he must not act in the management of the business, or hold any property which will expose the holder to any liability unless fully secured against loss.

The Public Trustee may employ such bankers and other persons as he may consider necessary, and in determining who is to be employed he is to have regard to the interests of the trust, and when practicable to take into consideration the wishes of the creator of the trust and of the other trustees, if any, either expressed or as implied by the practice of the creator of the trust or in the previous management of the trust.

By Rule 22 of the Public Trustee Rules, 1912—

> "All sums payable out of the income or capital of the trust property shall be made by a cheque on a bank signed by not less than two persons, viz.: (*a*) by the Public Trustee and a co-trustee, or (*b*) by the Public Trustee and an officer of the Public Trustee authorised in writing by him to act in that behalf either generally or in any particular case, or (*c*) by a co-trustee and one such duly authorised officer, or (*d*) by two such duly authorised officers. Provided that in any particular case the Public Trustee may authorise the payment of income by the person liable to pay the same direct to the person entitled to receive the same, or to his bank."

The fees charged by the Public Trustee are divided into four classes:—

1. The Acceptance Fee—payable out of capital.
2. The Withdrawal or Distribution Fee—payable out of capital.
3. The Income Fee—payable out of income.
4. Management Fees—payable generally out of capital.

The fees are revised from time to time with a view to making the Public Trustee Office self-supporting. They were last revised on 1st January, 1948. Any revision applies to the wills of testators not yet dead and to wills and trusts in course of administration.

When the Public Trustee acts as custodian trustee, the capital fees on acceptance and withdrawal are reduced by one-half, but the ordinary rates of income fees apply. The investment fees are also reduced by one-half.

Further information regarding the duties of the Public Trustee as custodian trustee will be found under the heading CUSTODIAN TRUSTEE.

Particulars as to the practice of the Department when transferring securities are given in the article TRANSFER OF SECURITIES (PUBLIC TRUSTEE).

For the convenience of testators and beneficiaries whose connections are mainly with the North of England, a branch office was opened, in 1914, in Manchester, and a Deputy Public Trustee was appointed for that district.

PUISNE MORTGAGE. A legal mortgage not protected by the deposit of the relative title deeds. It can be protected by registration as a Class C (i) charge on the Land Charges Register. Priority of puisne mortgages depends not on the date of their creation, but on the date of their registration. (See LAND CHARGES ACT, MORTGAGE.)

PUR AUTRE VIE. French, for the life of another. (See CESTUI QUE VIE.)

PUT. A Stock Exchange term meaning the right to sell a specified security at a fixed price within an arranged period. (See OPTIONS.)

PUT AND CALL. A Stock Exchange term. A double option, that is, a right to buy or to sell a certain amount of a specified stock at a date and at a price as fixed when the option was purchased.

PYX. (See TRIAL OF THE PYX.)

QUALIFICATION OF DIRECTOR. The number of shares which is required to be held by a director of a company to qualify him for the office. The Companies Act, 1948, does not provide for any special qualification, but in most companies a qualification is fixed by the Articles of Association. (See DIRECTORS.)

QUALIFIED ACCEPTANCE. (See ACCEPTANCE, QUALIFIED.)

QUALIFIED INDORSEMENT. (See INDORSEMENT.)

QUALIFIED TITLE. A type of title registered under the Land Registration Act, 1925. It was devised to meet cases where the title can only be established for a limited period and is practically unknown. (See LAND REGISTRATION.)

QUALIFYING AGREEMENT. The name sometimes given to the Memorandum of Deposit executed by a borrower who transfers stocks and shares into the name of the bank or its nominee as security. (See MEMORANDUM OF DEPOSIT.)

QUARTER DAYS. The English Quarter Days are—

Lady Day . .	March 25.
Midsummer Day .	June 24.
Michaelmas . .	September 29.
Christmas Day .	December 25.

The Scottish Quarter Days are—

Candlemas . .	February 2.
Whitsunday .	May 15.
Lammas . .	August 1.
Martinmas . .	November 11.

QUASI-NEGOTIABLE INSTRUMENTS. Certain mercantile documents possess some, but not all, of the qualities of negotiable instruments and are thus called quasi-negotiable or semi-negotiable instruments.

The outstanding example of this type is the bill of lading. It is capable of transfer or assignment by indorsement and delivery, and the assignee will acquire a right to the goods and a right to sue on the contract in his own name. Thus far the bill of lading is comparable to a fully negotiable instrument. But it ordinarily lacks the remaining quality of conferring a good title on an innocent transferee for valuable consideration, irrespective of prior absence or defect of title. There is, however, an exception to this rule in that an innocent sub-buyer can retain the goods represented by the bill against the unpaid seller if the original buyer has become insolvent. In other words, in such a case the unpaid seller's right of stoppage *in transitu* is defeated, and the sub-buyer gets a good title despite the infirmity of title of the original buyer. (See NEGOTIABLE INSTRUMENTS, SALE OF GOODS ACT.)

QUIT RENT. In feudal times where land was granted by the lord of the manor for certain services to be rendered to the lord, those services could sometimes be got quit of by the payment of a rent, called quit rent.

Copyhold was abolished 1st January, 1926, and manorial incidents, such as quit rents, were extinguished by compensation. (See COPYHOLD.)

QUORUM. Literally, of whom, e.g. there may be twenty directors, "of whom" (*quorum*) three may act.

A quorum is the number of persons which must be present at a meeting of the directors or members of a company before any business can be done. In companies which are governed by Table A (see ARTICLES OF ASSOCIATION), no business can be transacted at a general meeting unless three members are present, except that "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." (Articles 53 and 54.)

Where a company has articles other than those of Table A they should be perused to ascertain how many members constitute a quorum.

QUOTATION ON LONDON STOCK EXCHANGE. The following rules as to official quotations were issued by the Council of the Stock Exchange on 19th May, 1947—

Official List.

"159. (1) A list of securities (hereinafter referred to as 'the Official List') shall be published under the authority of the Council in which shall be quoted such securities as the Council shall from time to time order.

Application for Quotation.

"(2) Applications for quotation in the Official List must be made to the Secretary of the Share and Loan Department and must comply with

the requirements of the Council as contained in Appendix 34.

Council may Anticipate Quotation.

"(3) The Council may order the quotation of a security in the Official List before all such requirements have been complied with, in which case the entry of the security in the Official List shall, until such requirements have been fully complied with, bear such distinguishing mark as the Council shall direct.

Record of Marks.

"(4) The Official List shall, unless the Council order otherwise, contain a record in such form as the Council shall determine of bargains marked by Members.

Record of Inactive Quoted Securities.

"(5) The Council may make such provision as it thinks fit for the recording of bargains in inactive quoted securities, without prejudice, however, to the validity of the quotation granted to such securities.

Unauthorised Lists.

"(6) No list or record of dealings shall be published or sold by a Member without the sanction of the Council.

Removal from Quotation and Suspension of the Record.

"(7) The grant of quotation may be cancelled and the security withdrawn from the Official List or the recording of bargains may be suspended on the authority of the Council or of the Chairman, a Deputy-Chairman, or two Members of the Committee on Quotations. Where such action is taken otherwise than by the Council, it shall be reported to the Council at the first available opportunity.

Council's Decisions to be Posted.

"(8) The decisions of the Council regarding (*a*) rejection or deferment of an application for quotation, or (*b*) cancellation of quotation or suspension of the record, shall be posted in the House and when ordered by the Council communicated to the Exchange Telegraph Company for announcement on the tape."

The requirements included in Appendix 34, mentioned in (2) above, are: All certificates should bear a footnote to the effect that no transfer of any portion of the holding can be registered without the production of the certificate. Where the capital of a company consists of more than one class of shares of the same denomination, the distinctive numbers of the shares of each class must be printed on the face of the share certificates. All preference share certificates should bear on their face a statement of the company's capital and the conditions, both as to capital and dividends, under which the shares are issued. Debentures and debenture stock certificates should, in addition to legal requirements, state on their face the authority under which the company is constituted, the nominal capital of the company, the dates when the interest on the debentures or debenture stock is payable, and the authority under which the issue is made (i.e. articles of association and resolutions); and on their back the conditions of issue, redemption and transfer.

All certificates should state on their face the authority under which the company is constituted, and the amount of the authorised capital of the company.

In addition to other conditions precedent to an application for official quotation, the articles of association should provide that fully-paid shares shall be free from all lien. (See LIEN.)

RACK RENT. A rent which, as its name implies, has been stretched or raised to the full annual value of the property, so that no more can be obtained.

RAISED CHEQUE. (See under ALTERATIONS, MATERIAL ALTERATION.)

RATE OF EXCHANGE. The price of money in one country stated in the currency of another country. (See BILL OF EXCHANGE, EXCHANGE CONTROL ACT, 1947, EXCHANGE RESTRICTIONS.)

RE-ACCEPTANCE. (See under ACCEPTANCE.)

REAL ESTATE. By the Administration of Estates Act, 1925, Section 3 (1). "In this Part of this Act 'Real Estate' includes:

"(*a*) Chattels real, and land in possession, remainder, or reversion, and every interest in or over land to which a deceased person was entitled at the time of his death; and

"(*b*) Real estate held on trust (including settled land), or by way of mortgage or security, but not money to arise under a trust for sale of land, nor money secured or charged on land."

Real property devolves on the personal representatives of a deceased person. (Section 1 (1).)

REALTY. (From Latin, *res*, a thing.) Property is divisible into "real" and "personal," or "realty" and "personalty."

Realty includes freehold land, but not leasehold land (leasehold is included under personalty). Where real property is to be sold, according to the terms of a will, it is reckoned as personalty. If Brown leaves his "real" property to Jones, Jones is called the devisee, and the property is said to be devised. If he leaves "personal" property, Jones is called the legatee and the property is said to be bequeathed.

The distinction between realty and personalty arose from the fact that the tenant of a freehold estate who was dispossessed of it could bring an action to recover the land itself, the "thing" or "res" of which he had been deprived. The property that could be recovered was called real property. In the case of a tenant for a fixed term of years, however, he could not bring an action for recovery of the land itself but only an action for damages against the person who had deprived him of the land. Hence leasehold estates were called personal property.

REBATE. Literally a drawing back. At the end of a half-year a banker calculates the amount of rebate on bills discounted—that is, he takes into his profit and loss account only the amount of discount up to the end of the half-year, the discount from that date till the maturity of the bills (the rebate amount) being carried forward into the accounts for the next half. The rebate is one of the items which passes through the adjustment of interest account.

The word is also used with reference to an amount of interest credited to an account to refund a sum previously charged.

If a documentary bill is paid before maturity it is said to be paid under rebate, an allowance of ½ per cent above the deposit rate of the principal London banks being made. (See DOCUMENTARY BILL.)

As to the rebate to be deducted when a creditor proves upon a bankrupt's estate for a debt payable at a future time, see Rule 22, under PROOF OF DEBTS.

RECEIPT. A receipt is a written acknowledgment of having received a sum of money. "A receipt is not required to be given in a ready-money transaction" (*Bussey* v. *Barnett*, 9 M. & W. 312), but "if a written receipt is given, it must be stamped." (Alpe's *Law of Stamp Duties*.) The payment of the stamp is thrown on the person to whom the payment is made.

By the Stamp Act, the duty is—

	£	s.	d.
RECEIPT given for, or upon the payment of, money amounting to £2 or upwards . . .	0	0	2

(Increased from 1d. to 2d., as from 1st September, 1920, by the Finance Act, 1920.)

Exemptions.

(1) Receipt given for money deposited in any bank, or with any banker, to be accounted for and expressed to be received of the person to whom the same is to be accounted for.

(2) Acknowledgment by any banker of the receipt of any bill of exchange or promissory note for the purpose of being presented for acceptance or payment.

(3) Receipt given for or upon the payment of any parliamentary taxes or duties or of money to or for the use of Her Majesty.

(4) Receipt given by an officer of a public department of the State for money paid by way of imprest or advance, or in adjustment of an account, where he derives no personal benefit therefrom.

(5) Receipt given by any agent for money imprested to him on account of the pay of the army.

(6) *Repealed.* (See below.)

(7) Receipt given for any principal money or interest due on an exchequer bill.

(8) *Repealed.* (See below.)

(9) Receipt given upon any bill or note of the Bank of England or the Bank of Ireland.

(10) Receipt given for the consideration money for the purchase of any share in any of the Government or Parliamentary stocks or funds, or in the stocks and funds of the Secretary of State in Council of India, or of the Bank of England, or of the Bank of Ireland, or for any dividend paid on any share of the said stocks or funds respectively

(11) Receipt indorsed or otherwise written upon or contained in any instrument liable to stamp duty, and duly stamped, acknowledging the receipt of the consideration money therein expressed, or the receipt of any principal money, interest, or annuity thereby secured or therein mentioned.

(12) Receipt given for any allowance by way of drawback or otherwise upon the exportation of any goods or merchandise from the United Kingdom.

(13) Receipt given for the return of any duty of customs upon a certificate of over entry.

(14) Receipt given by an officer of a county court for money received by him from a party to any proceeding in the court. (Finance Act, 1930.)

(14A) Receipt given in respect of any sum payable as compensation under the Workmen's Compensation Act, 1925. (Finance Act, 1930.)

(15) Receipt given by or on behalf of a clerk to justices or magistrates for money received in respect of a fine. (Finance Act, 1930.)

Receipts upon letters of allotment or scrip certificates are not now exempt. Exemption No. 11 no longer applies.

The Finance Act, 1924, Section 36, repealed exemption number 6 in the Stamp Act, 1891, and substituted the following exemption—

"Receipt given for or on account of any salary, pay or wages, or for or on account of any other like payment made to or for the account or benefit of any person, being the holder of an office or any employee, in respect of his office or employment, or for or on account of money paid in respect of any pension, superannuation allowance, compassionate allowance or other like allowance."

The Finance Act, 1895, Section 9, repealed exemption number 8 in the Stamp Act, 1891, "Receipt written upon a bill of exchange or promissory note duly stamped," and enacted that the duty shall be charged as if the exemption had not been contained in that Act, provided that neither the name of a banker (whether accompanied by words of receipt or not) written in the ordinary course of his business as a banker upon a bill of exchange or promissory note duly stamped, nor the name of the payee written upon a draft or order, if payable to order, shall constitute a receipt chargeable with stamp duty.

By the Friendly Societies Act, 1896, Section 33, a receipt given by or to a registered society in respect of money payable by virtue of its rules or of this Act, is exempt.

The Stamp Act, 1891, provides—

"101. (1) For the purposes of this Act the expression 'receipt' includes any note, memorandum, or writing

whereby any money amounting to two pounds or upwards, or any bill of exchange or promissory note for money amounting to two pounds or upwards, is acknowledged or expressed to have been received or deposited or paid, or whereby any debt or demand, or any part of a debt or demand, of the amount of two pounds or upwards, is acknowledged to have been settled, satisfied or discharged, or which signifies or imports any such acknowledgment, and whether the same is or is not signed with the name of any person.

' (2) The duty upon a receipt may be denoted by an adhesive stamp, which is to be cancelled by the person by whom the receipt is given. before he delivers it out of his hands.

" 102. A receipt given without being stamped may be stamped with an impressed stamp upon the terms following; that is to say,

" (1) Within fourteen days after it has been given, on payment of the duty and a penalty of five pounds;

" (2) After fourteen days, but within one month after it has been given, on payment of the duty and a penalty of ten pounds;

and shall not in any other case be stamped with an impressed stamp.

" 103. If any person—

" (1) Gives a receipt liable to duty and not duly stamped; or

" (2) In any case where a receipt would be liable to duty refuses to give a receipt duly stamped; or

" (3) Upon a payment to the amount of two pounds or upwards gives a receipt for a sum not amounting to two pounds, or separates or divides the amount paid with intent to evade the duty;

he shall incur a fine of ten pounds."

Where a form of receipt, either on the face or on the back of a cheque, is signed, it must be stamped, unless it comes under the exemption as contained in Section 36, Finance Act, 1924 (see above), in which case the drawer should mark the receipt form that it is exempt or that the payment is for salary or wages. If such an intimation is not given, the banker is justified in refusing payment until the receipt is stamped. When a receipt is signed in a foreign country on a cheque drawn on this country, the duty of the paying banker is referred to in the article RECEIPT ON CHEQUE.

If a receipt is placed upon a bill or promissory note (except by a banker), it requires to be stamped. (See above.)

When a deposit receipt is issued, it does not require a stamp (exemption No. 1, see above), but when it is discharged by the depositor signing a form of receipt on the back, a stamp is required. To save the trouble of affixing an adhesive stamp on payment of a deposit receipt, the receipts of some banks are impressed with a stamp when issued.

Where a banker acknowledges the receipt of money from, say, Jones for the credit of Brown, a stamp is required. Where a letter acknowledges a payment and encloses a stamped receipt, it is considered that one stamp is sufficient (*Attorney-General* v. *Ross*, [1909] 2 I.R. 246).

When a receipt is given in duplicate, both the original and the duplicate are subject to the twopenny stamp duty. (Board of Inland Revenue.)

The grounds for this opinion are not stated, but presumably they are to be found in the Schedule to the Stamp Act, 1891, as set out in the article COPY.

A receipt stamp may be either impressed or adhesive.

Stamps to the value of twopence may be used instead of one for twopence.

Where a debt is paid by cheque, it is not necessary to state on the receipt that payment was made by cheque, as the person taking the cheque can, in the event of the cheque being dishonoured, sue the debtor for the amount.

Receipts for subscriptions to charities are chargeable with duty; but Alpe's *Law of Stamp Duties* states that the Commissioners do not enforce a penalty if "a receipt for a donation or subscription to an institution totally devoted to charitable purposes" is given unstamped. (See RECEIPT ON CHEQUE.)

The receipt by a building society upon a mortgage which has been repaid is exempt from stamp duty. (See STATUTORY RECEIPT.)

The receipt which, under the Law of Property Act, 1925, takes the place of a reconveyance of a discharged mortgage, is liable to reconveyance duty. (See MORTGAGE.)

A receipt indorsed upon an equitable charge is not liable to stamp duty, as it comes within Exemption 11 (see above).

RECEIPT ON CHEQUE. Many customers use cheques with a form of receipt upon the

face or upon the back, such receipt being, in most cases, the only one which the drawer of the cheque requires from the person to whom the cheque is payable.

A document of this description is sometimes worded: "Pay or order the sum of when the receipt on the back hereof has been duly stamped, signed and dated."

The printed form on the back may be: "Received from the amount named on the face hereof.

Date 19 ." 2d. Stamp

Below the receipt the following words are sometimes printed: "The receipt as above is also the indorsement of the cheque and is the only acknowledgment required."

The receipt, instead of being on the back, is, as mentioned, sometimes on the face, below the drawer's signature, and in addition to the receipt being signed the document may require to be indorsed.

Such a document does not agree with the definition of a cheque in the Bills of Exchange Act, 1882. To comply with that Act a cheque must be an unconditional order in writing. In the form above given, the order to pay is conditional upon the receipt being duly completed.

As an instrument of this nature is not a cheque, the protection afforded by the Bills of Exchange Act to a banker paying a cheque drawn upon him, will not extend to it. But it is considered that protection is afforded to the banker collecting such a document when crossed by Section 17 of the Revenue Act, 1883, which provides as follows—

"Sections 76 to 82, both inclusive, of the Bills of Exchange Act, 1882, and Section 25 of the Forgery Act, 1861, shall extend to any document issued by a customer of any banker, and intended to enable any person or body corporate to obtain payment from such banker of the sum mentioned in such document, and shall so extend in like manner as if the said document were a cheque: Provided that nothing in this Act shall be deemed to render any such document a negotiable instrument. For the purpose of this Section, Her Majesty's Paymaster-General and the Queen's and Lord Treasurer's Remembrancer in Scotland shall be deemed to be bankers, and the public officers drawing on them shall be deemed customers." Sir John R. Paget points out in his *Law of Banking* that the Revenue Act treats these documents as not negotiable instruments, "not negotiable" having apparently the meaning of not transferable, and adds that it would seem "that the banker's safer course is in all cases to regard documents of this sort as available only in the hands of the payee."

The use of documents of this nature is becoming very common, and as the banker's position with regard to them appears to be so uncertain and unsatisfactory, it is necessary, for the banker's protection, that he should obtain, from the customer using this special form, an indemnity to the following effect—

"In consideration of your allowing me, or persons duly authorised by me, to draw drafts on you with receipts attached in the form annexed, I undertake that you shall have as against me in respect thereof the protection afforded by Section 60 of the Bills of Exchange Act, 1882, and that the signature of the receipt at the foot of such drafts shall have the effect of and operate as an indorsement within the meaning of the same Section." It is to be noted that the indemnity would protect only the paying banker, and that with regard to various statutory bodies who use this form of cheque an indemnity may be *ultra vires*.

Orders issued by Local Authorities are frequently payable upon condition that a form of receipt is signed, and in addition they are drawn upon the treasurer, and not upon a bank, and are therefore not cheques. If the treasurer pays such orders to a wrong person he is liable to the true owner. If a banker collects one of these orders bearing a forged indorsement he also is liable to the true owner. (See further under LOCAL AUTHORITIES.)

In addition to the form of document given above, some cheques have a note at the foot that "the receipt on the back hereof must be stamped, signed and dated." In other cases no reference at all to a receipt appears on the face of the cheque, but on the back may be found a receipt such as "Received from the amount named on the face hereof.

2d. Stamp "

In the cases where there is no condition attached to the order to pay, the cheque

is not excluded from the definition given in the Act. A mere note at the foot, or on the back, of a cheque with respect to a receipt, and the presence of a form of receipt on the cheque, so long as the order to pay is unconditional, does not, apparently, affect the nature of the instrument. In *Nathan* v. *Ogden* (1905), 21 T.L.R. 775, where a cheque had printed at the foot the words "the receipt at back hereof must be signed, which signature will be taken as an indorsement of the cheque," it was held that the instrument was a cheque, and that the words at the foot were not addressed to the banker and did not affect him. Sir John R. Paget (in the Gilbart Lectures, 1911), expressed the opinion that a note on a cheque to the above effect "comes very near making the order conditional, although not actually incorporated with that order. If it is not addressed to the drawee it still affects him." In practice, bankers do regard such a note on a cheque as a condition which must be fulfilled before payment of the cheque.

Some cheques with receipt forms bear an announcement, as mentioned above, that the signature of the receipt is intended to be an indorsement as well as a receipt. Sir John R. Paget has expressed the opinion that such a signature is not an indorsement within the meaning of the term as used in the Bills of Exchange Acts, and that "a banker paying an order cheque on which such is the only indorsement loses the protection of Section 60 and, if crossed, Section 80. A banker collecting such cheque, crossed, cannot set up Section 82. Independent indorsement is requisite in every case."

Certain cheques provide for the receipt being signed by procuration. The following is an example—

"Pay John Brown the sum named below if presented within six months from the date hereof duly stamped, signed and dated .

"Received the sum of as per particulars furnished.

"*Note.* This receipt should be signed by the payee, but a "per pro." discharge will be accepted if guaranteed by the payee's bankers. In the case of a corporate body, the receipt must be signed on their behalf by an authorised officer whose position must be stated."

A receipt on a cheque, whether upon the face or upon the back, requires a twopenny stamp, if the amount is £2 or over, unless the signer of the receipt is exempted by law, and the signature should not be written wholly on the stamp. By the Finance Act, 1924, receipts for wages, salaries, and similar payments (see under RECEIPT) are exempted from duty, and a cheque bearing a form of receipt should, when coming under that exemption, be marked by the drawer that the receipt is exempt from stamp duty or that the payment is for salary or wages, the instructions being confirmed by the drawer's signature. In the absence of such information the banker is justified in refusing payment of the cheque unless the receipt is stamped. A banker is not under a legal obligation to see that a receipt on a cheque is stamped, but by consenting to pay cheques bearing a printed receipt it becomes a duty to his customer to see that the receipt is duly stamped.

A receipt executed abroad on a cheque drawn on a bank in the United Kingdom is liable to British stamp duty if the cheque was in payment of a transaction arising out of a contract executed in this country. When a cheque of this kind is to be sent abroad the receipt should be stamped before despatch, as the necessary British stamp would not be obtainable in the foreign country.

If, however, the cheque was, for example, drawn in favour of a foreign hotel-keeper to pay his hotel bill, it would be outside the provisions of Section 14 (4) and would not require stamping. (See Section 14 (4), Stamp Act, 1891, under STAMP DUTIES.) As a paying banker would usually be ignorant of the circumstances in which the cheque was issued, the Council of the Institute of Bankers consider "that, in the absence of instructions to the contrary from the drawer, a stamped receipt should be required before the cheque is paid." (*Journal of the Institute*, Vol. 47, p. 496.)

A receipt by a banker upon a bill or cheque is exempt, provided it is given "in the ordinary course of his business as a banker." (See RECEIPT.)

RECEIVER FOR DEBENTURE HOLDERS. A debenture holder or other creditor of a company who considers that the assets of the company are in jeopardy, may apply to the Court for the appointment of a receiver. By Section 368 of the Companies Act, 1948, the Official Receiver may be so appointed. A receiver appointed by the Court will, on the application of the liquidator of a company, have his remuneration fixed by the Court. (Section 371.)

The appointment of a receiver for debenture holders usually arises, however, where, consequent upon default in principal or interest payment or on the happening of

other event mentioned in the debenture or trust deed, the stipulated number of debenture holders execute a document under hand appointing a nominee as receiver.

The appointment of a receiver must be notified by the person making the application to the Court, or by the person appointing the receiver under the powers contained in the debenture, to the Registrar of Companies within seven days under a penalty of £5 for each day of default. (Section 102.)

A receiver must lodge six-monthly statements of accounts with the Registrar of Companies. (Section 374 (1).)

Where a receiver is appointed in respect of a debenture containing a floating charge, he must be supplied within fourteen days with a statement of the company's affairs in prescribed form. Within two months of the receipt of such statement, the receiver must send to the Registrar of Companies and to the bank a copy of such statement with his comments thereon. Any trustees for the debenture-holders must be supplied with a summary of the statement.

Thereafter the receiver must supply the Registrar of Companies, and any trustees for the debenture-holders, with a summary of receipts and payments for each twelve months within two months of the expiration of such period. (Section 372 (2).)

The appointment of a receiver puts into his hands all the assets which were the subject of a fixed charge in the debenture, and also "crystallises" any floating charge, so that he is also entitled to any assets that were covered by such floating charge.

A banker should require evidence of appointment in the shape of the Court Order or the document of appointment by the debenture holders. In the latter case he should see a copy of the debenture to confirm that the receiver has been duly appointed and also to ascertain if the debenture gives a floating charge on the company's assets. For the receiver will ask for any credit balance to be paid over to him and this should only be done where there is such a floating charge (which will have become "fixed" by the receiver's appointment). A debenture usually contains a provision that any receiver appointed shall be deemed to be the agent of the company in order that the company shall be liable for his remuneration, default, etc. On notice that a receiver has been appointed the account(s) of the company should be stopped and any cheques thereafter presented returned marked "Receiver appointed," or "Refer to Drawer."

A credit balance cannot be retained against a receiver in respect of unmatured discounted bills, but it can be retained in respect of discounted bills overdue and unpaid, and in respect of a loan. In the latter case this is so even if no demand for repayment has been made, for a loan payable on demand (as all bank advances are) is presently payable although no demand has been made. (*Re J. Brown's Estate*, [1893] 2 Ch. 300.)

Where a receiver appointed by the Court wishes to borrow, an Order of the Court authorising the borrowing and the giving of security over the company's assets must be exhibited. In the absence of a personal covenant for repayment by the receiver or the giving of priority by the Court to the bank advances over the receiver's right to be indemnified out of the assets of the estate in respect of his costs and charges, etc., the receiver will have first claim against the security in respect of his expenses, etc.

In the case of a receiver appointed out of Court, he has power to borrow if the debenture conferred a power to carry on the business of the company, but the debenture holders should postpone their claims on the company's assets in favour of the bank.

By Section 369 (2) of the Companies Act, 1948, a receiver appointed out of Court is personally liable for any contract he enters into (e.g. for any borrowing of money). Previously he was only personally liable if he had in some explicit way admitted liability.

A receiver appointed out of Court can now apply to the Court for directions as in the case of a receiver appointed by the Court. (Section 369 (1).)

Where a receiver is acting and the company is in liquidation, the Inland Revenue are prepared to extend the provisions of Section 339 (1) of the Companies Act, 1948, regarding the exemption from stamp duty of liquidator's cheques (save in a member's voluntary winding up) to cheques drawn by the receiver.

(See COMPANIES, MORTGAGE, OFFICIAL RECEIVER, WINDING UP.)

RECEIVER FOR PARTNERSHIP. Where the members of a firm are in disagreement, application is sometimes made to the Court for dissolution of the firm. The Court will appoint a receiver for the purpose of winding up the business of the firm. His function is to complete existing contracts, to get in the debts owing to the firm, to realise the partnership assets, discharge the firm's debts, and

distribute any surplus to the partners in accordance with the articles of partnership, if any. On the appointment of a receiver, the partners' powers to bind the firm cease, and a credit balance on the firm's account can safely be paid over to the receiver after exhibition of his appointment and identification.

In some cases, a receiver and manager is appointed by the Court, who will have power not only to fulfil existing contracts, but to enter into such new contracts as are necessary for the ordinary conduct of the business.

A receiver or receiver and manager cannot validly charge any of the firm's assets as security for an advance without the Court's leave. Failing a Court Order, the receiver should assume personal liability for any borrowing.

RECEIVER IN LUNACY. A person authorised by the Court to receive and administer the assets of a person certified to be of unsound mind, under the direction of the Court. He must give security to the satisfaction of the Master in Lunacy, but there is no onus on a banker to satisfy himself that this formality has been completed. A receiver's authority is found in the document known as a Lunacy Order issued by the Court, an official copy of which should be obtained and filed. Where the Order authorises a receiver to deal with funds or securities in a banker's hands, the receiver's receipt therefor will be a good discharge for the banker.

A receiver has no power to borrow unless authorised by the Court. His account should be earmarked with the name of the patient's estate and it is in effect a trust account. On the death of the patient, the receiver's powers cease and the deceased's assets are administered by his personal representatives. In such a case a receiver would be entitled to complete any transactions entered into before the patient's decease.

Application for the appointment of a receiver where the estate is small can be made to the Personal Application Branch of the Management and Administration Department, Royal Courts of Justice, W.C.2. The procedure is neither expensive nor lengthy. (See LUNACY.)

A receiver can be appointed on other grounds than insanity, e.g. senility or complete physical infirmity.

RECEIVER OF RENTS. When a mortgagee by deed, through default of the mortgagor, is in a position to exercise his power of sale, he may; if he choose, appoint a receiver to collect the rents and manage the estate or business. By so doing, the mortgagee avoids the risks to which he would be liable if he entered into possession himself, as a receiver is deemed to be the agent of the mortgagor.

The Law of Property Act, 1925, defines the appointment, powers, remuneration and duties of a receiver as follows—

Section 109. (1) A mortgagee entitled to appoint a receiver under the power in that behalf conferred by this Act shall not appoint a receiver until he has become entitled to exercise the power of sale conferred by this Act, but may then, by writing under his hand, appoint such person as he thinks fit to be receiver.

(2) The receiver shall be deemed to be the agent of the mortgagor; and the mortgagor shall be solely responsible for the receiver's acts or defaults, unless the mortgage deed otherwise provides.

(3) The receiver shall have power to demand and recover all the income of the property of which he is appointed receiver, by action, distress, or otherwise, in the name either of the mortgagor or of the mortgagee, to the full extent of the estate or interest which the mortgagor could dispose of, and to give effectual receipts, accordingly, for the same.

(4) A person paying money to the receiver shall not be concerned to inquire whether any case has happened to authorise the receiver to act.

(5) The receiver may be removed, and a new receiver may be appointed, from time to time by the mortgagee by writing under his hand.

(6) The receiver shall be entitled to retain out of any money received by him, for his remuneration, and in satisfaction of all costs, charges, and expenses incurred by him as receiver, a commission at such rate, not exceeding five per centum on the gross amount of all money received, as is specified in his appointment, and if no rate is so specified, then at the rate of five per centum on that gross amount, or at such higher rate as the Court thinks fit to allow, on application made by him for that purpose.

(7) The receiver shall, if so directed in

writing by the mortgagee, insure and keep insured against loss or damage by fire, out of the money received by him, any building, effects, or property comprised in the mortgage, whether affixed to the freehold or not, being of an insurable nature.

(8) The receiver shall apply all money received by him as follows, namely:

(*a*) In discharge of all rents, taxes, rates, and outgoings whatever affecting the mortgaged property; and

(*b*) In keeping down all annual sums or other payments, and the interest on all principal sums, having priority to the mortgage in right whereof he is receiver; and

(*c*) In payment of his commission, and of the premiums on fire, life, or other insurances, if any, properly payable under the mortgage deed or under this Act, and the cost of executing necessary or proper repairs directed in writing by the mortgagee; and

(*d*) In payment of the interest accruing due in respect of any principal money due under the mortgage: and

(*e*) In or towards discharge of the principal money if so directed in writing by the mortgagee;

and shall pay the residue of the money received by him to the person who, but for the possession of the receiver, would have been entitled to receive the income of the mortgaged property, or who is otherwise entitled to that property.

Any order appointing a receiver or sequestrator of land may be registered under the Land Charges Act, 1925. (See LAND CHARGES.)

Where the power of a mortgagee either to sell or appoint a receiver is made exercisable by reason of the mortgagor committing an act of bankruptcy or being adjudged a bankrupt, such power shall not be exercised only on account of the act of bankruptcy or adjudication, without the leave of the Court. This applies only to a mortgage executed after 1925. (Section 110.)

If a receiver of rents is appointed in respect of land charged by a limited company, notice of the appointment must be lodged with the Registrar of Companies, otherwise a fine of £5 for each day of default will be incurred. (Companies Act, 1948, Section 102 (1).)

A receiver of rents is appointed by a bank where its power of sale has arisen over property held as security, and the property has been leased by the borrower and a sale is not immediately practicable.

RECEIVER UNDER AGRICULTURAL CHARGE. In the case of a short term credit under the Agricultural Credits Act, 1928, secured by a fixed and/or a floating charge on the farmer's assets, provision is made for the conversion of any floating charge into a fixed one on the happening of specified events such as the death or bankruptcy of the farmer or default in principal or interest payments. Thereupon the proprietor of the charge can appoint a receiver to take possession of the assets covered by such charge, whether fixed or floating or both.

RECEIVER'S NOTES. When the affairs of an American railroad have passed into the hands of a receiver, he sometimes raises further capital by the issue of what are called "Receiver's Notes."

RECEIVING ORDER. Where a debtor has committed an "act of bankruptcy" (see ACT OF BANKRUPTCY), a creditor, wishing to have the estate realised under the bankruptcy law for the benefit of the creditors, may petition the Court to make a receiving order. The petition may be presented either by a creditor or by the debtor himself. When a receiving order is made, it means that the Court appoints the official receiver to take charge of the debtor's estate as interim trustee. The debtor is not immediately adjudged a bankrupt, but as soon as may be after making a receiving order, a general meeting of creditors is held to consider whether a proposal for a composition or scheme of arrangement shall be entertained, or whether he shall be adjudged bankrupt. (See MEETING OF CREDITORS.) After a receiving order has been made, a creditor cannot bring any action against the debtor unless under sanction of the Court, but a creditor's power to deal with any securities he may have is not affected by the receiving order. A receiving order may be made even if there is only one creditor. As soon as convenient after the expiration of the time for the submission of a debtor's statement of affairs (see Section 14 below), the Court shall hold a public sitting for the

examination of the debtor. (See PUBLIC EXAMINATION OF DEBTOR.) As to the validity of certain payments made before a receiving order is made or notice of the presentation of a bankruptcy petition is received, see under ACT OF BANKRUPTCY.

A receiving order is operative as from the beginning of the day on which it is made. The making of the order, and not notice thereof, is the determinant factor in affecting the validity of transactions with the debtor concerned. To avoid the hardships that would arise where the gazetting of a receiving order is postponed, and a banker in ignorance thereof pays the debtor's cheques, the Bankruptcy (Amendment) Act, 1926, provides that where any money or property of a bankrupt has, on or after the date of the receiving order, but before notice thereof has been gazetted in the prescribed manner, been paid or transferred by a person having possession of it to some other person, and the payment of the transfer is, under the provisions of the Bankruptcy Act, 1914, void as against the trustee in bankruptcy, then, if the person by whom the payment or transfer was made proves that when it was made he had not had notice of the receiving order, any right of recovery which the trustee may have against him in respect of the money or property shall not be enforced by any legal proceedings except where the Court is satisfied that it is not reasonably practicable for the trustee to recover from the person to whom it was paid or transferred. (Section 4.) This section, however, does not give any protection against payments to the debtor personally in such circumstances.

The following Sections of the Bankruptcy Act, 1914, deal with a bankruptcy petition and the making of a receiving order—

Jurisdiction to make Receiving Order.

"3. Subject to the provisions hereinafter specified, if a debtor commits an act of bankruptcy the Court may, on a bankruptcy petition being presented either by a creditor or by the debtor, make an order, in this Act called a receiving order, for the protection of the estate.

Conditions on which Creditor may Petition.

"4. (1) A creditor shall not be entitled to present a bankruptcy petition against a debtor unless—

"(*a*) The debt owing by the debtor to the petitioning creditor, or, if two or more creditors join in the petition, the aggregate amount of debts owing to the several petitioning creditors amounts to fifty pounds, and

"(*b*) The debt is a liquidated sum payable either immediately or at some certain future time, and

"(*c*) The act of bankruptcy on which the petition is grounded has occurred within three months before the presentation of the petition, and

"(*d*) The debtor is domiciled in England, or, within a year before the date of the presentation of the petition has ordinarily resided, or had a dwelling-house or place of business in England, or (except in the case of a person domiciled in Scotland or Ireland or a firm or partnership having its principal place of business in Scotland or Ireland) has carried on business in England, personally or by means of an agent or manager or (except as aforesaid) is or within the said period has been a member of a firm or partnership of persons which has carried on business in England by means of a partner or partners, or an agent or manager,

nor, where a deed of arrangement has been executed, shall a creditor be entitled to present a bankruptcy petition founded on the execution of the deed, or on any other act committed by the debtor in the course or for the purpose of the proceedings preliminary to the execution of the deed, in cases where he is prohibited from so doing by the law for the time being in force relating to deeds of arrangement.

"(2) If the petitioning creditor is a secured creditor, he must in his petition either state that he is willing to give up his security for the benefit of the creditors in the event of the debtor being adjudged bankrupt, or give an estimate of the value of his security. In the latter case, he may be admitted as a petitioning creditor to the extent of the balance of the debt due to him, after deducting

the value so estimated in the same manner as if he were an unsecured creditor.

Proceedings and Order on Creditor's Petition.

"5. (1) A creditor's petition shall be verified by affidavit of the creditor, or of some person on his behalf having knowledge of the facts, and served in the prescribed manner.

"(2) At the hearing the Court shall require proof of the debt of the petitioning creditor, of the service of the petition, and of the act of bankruptcy, or, if more than one act of bankruptcy is alleged in the petition, of some one of the alleged acts of bankruptcy, and, if satisfied with the proof, may make a receiving order in pursuance of the petition.

"(3) If the Court is not satisfied with the proof of the petitioning creditor's debt, or of the act of bankruptcy, or of the service of the petition, or is satisfied by the debtor that he is able to pay his debts, or that for other sufficient cause no order ought to be made, the Court may dismiss the petition.

Debtor's Petition and Order Thereon.

"(6) (1) A debtor's petition shall allege that the debtor is unable to pay his debts, and the presentation thereof shall be deemed an act of bankruptcy without the previous filing by the debtor of any declaration of inability to pay his debts, and the Court shall thereupon make a receiving order.

"(2) A debtor's petition shall not, after presentment, be withdrawn without the leave of the Court.

Effect of Receiving Order.

"7. (1) On the making of a receiving order an official receiver shall be thereby constituted receiver of the property of the debtor, and thereafter, except as directed by this Act, no creditor to whom the debtor is indebted in respect of any debt provable in bankruptcy shall have any remedy against the property or person of the debtor in respect of the debt, or shall commence any action or other legal proceedings, unless with the leave of the Court and on such terms as the Court may impose.

"(2) But this Section shall not affect the power of any secured creditor to realise or otherwise deal with his security in the same manner as he would have been entitled to realise or deal with it if this Section had not been passed.

Power to Appoint Interim Receiver.

"8. The Court may, if it is shown to be necessary for the protection of the estate, at any time after the presentation of a bankruptcy petition, and before a receiving order is made, appoint the official receiver to be interim receiver of the property of the debtor, or of any part thereof, and direct him to take immediate possession thereof or of any part thereof."

The official receiver may, if necessary, appoint a special manager of a debtor's estate to act until a trustee is appointed. (Section 10.) Every receiving order must be gazetted, and advertised in a local paper. (Section 11.)

Debtor's Statement of Affairs.

"14. (1) Where a receiving order is made against a debtor, he shall make out and submit to the official receiver a statement of and in relation to his affairs in the prescribed form, verified by affidavit, and showing the particulars of the debtor's assets, debts, and liabilities, the names, residences and occupations of his 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 so submitted within the following times, namely:

"(i) If the order is made on the petition of the debtor, within three days from the date of the order:

"(ii) If the order is made on the petition of a creditor, within seven days from the date of the order:

but the Court may, in either case for special reasons, extend the time.

"(3) If the debtor fails without reasonable excuse to comply with the requirements of this Section, the Court may, on the application of the

official receiver, or of any creditor, adjudge him bankrupt.

"(4) Any person stating himself in writing to be a creditor of the bankrupt may, personally or by agent, inspect the statement at all reasonable times, and take any copy thereof or extract therefrom, but any person untruthfully so stating himself to be a creditor shall be guilty of a contempt of Court, and shall be punishable accordingly on the application of the trustee or official receiver." (See BANKRUPTCY.)

A petition in bankruptcy and any receiving order in bankruptcy made after 1925, whether or not it is known to affect land, may be registered under the Land Charges Act, 1925. (See LAND CHARGES.)

RECONSTRUCTION. There are various reasons which necessitate the reconstruction of a company, but the commonest is the necessity to raise fresh capital. In the case of a company where the capital is all paid up and further capital is required, the object is frequently attained by the undertaking being purchased by a new company. The shares in the new company, which are given in exchange for the fully paid shares in the old company, are partly paid-up shares, and it is from the uncalled capital in the new company that the necessary funds are obtained to continue the business of the undertaking.

A reconstruction may take place consequent upon an arrangement with the creditors of the company whereby they may receive in lieu of their claims debentures in the company payable at different dates.

Sections 206–209 of the Companies Act, 1948, provide for the reconstruction and amalgamation of companies without the entailment of winding up.

RECONVEYANCE. Before 1926, a legal mortgage took the form of a conveyance of the property to the mortgagee with an equity of redemption. Accordingly, when a mortgage was redeemed it was necessary for the mortgagee to execute a reconveyance of the property to the mortgagor.

Under the Law of Property Act, 1925, the legal estate now remains in the mortgagor and hence a reconveyance, on discharge of the mortgage, has given place to a statutory receipt (*q.v.*). But a mortgagor is entitled to have a reassignment, surrender, release, or transfer executed in his favour in place of a receipt. (Section 115 (4).)

Where a release of mortgaged deeds is being made in consideration of payment of part only of a debt, a statutory receipt is inapplicable, for it is the receipt for all money secured by the mortgage deed or for the balance remaining owing.

A reconveyance in the following form may be used in such a case—

THIS SURRENDER AND RELEASE made the day of 19 BETWEEN (hereinafter called "the said Bank") of the one part and the within named of the other part WITNESSETH that the said Bank in consideration of the sum of £ paid to them by the said in reduction of the moneys owing on the security of the within written Deed (the receipt of which sum of £ the Bank hereby acknowledge) as Mortgagees and according to their interest hereby surrender and release unto the said all and singular the property charged by the within written Deed To the intent that the said property may be discharged from all claims under the within written Deed.

If leasehold property is concerned, appropriate alterations will be made.

The stamp duty on a reconveyance is one shilling per cent on the total sum at any time secured by the mortgage.

(See STATUTORY RECEIPT.)

RECOURSE. Literally, a running back. In the event of a bill of exchange being dishonoured at maturity, the holder has a right of recourse against, that is a right to fall back upon, the other parties to the bill. A holder, however, has no recourse against a drawer or an endorser who qualifies his signature with the words "without recourse," or the French equivalent *sans recours*. (See WITHOUT RECOURSE.)

REDDENDUM. The clause in a lease which specifies the rent to be reserved to the lessor. Reddendum was the first word of the clause in the Latin form of the deed.

REDEEMABLE. When this word is used its precise meaning should be ascertained, as a redeemable stock may mean either a stock which may be redeemed at the option of the borrower (that is, without any obligation to redeem), or it may mean a stock which must be redeemed at a certain date.

REDEEMABLE DEBENTURE. (See DEBENTURE.)

REDEEMABLE PREFERENCE SHARES. By Section 58 of the Companies Act, 1948, 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."

RE-DISCOUNT. A person who has discounted a bill may, if he wish, discount it afresh with another person. (See DISCOUNTING A BILL.)

In some countries it is usual for commercial banks to re-discount bills with the Central Bank, a turn being obtained in the difference between the fine rate charged by the Central Bank and the rate applied in the first instance.

RE-DRAFT. Where a foreign bill is dishonoured and protested, a re-draft is a fresh bill drawn by the holder upon the drawer or indorser for the amount of the bill plus expenses of protest, stamp, etc. (See RE-EXCHANGE.)

REDUCTION OF SHARE CAPITAL. The principal provisions regarding a reduction of share capital in a company limited by shares are contained in the following Sections of the Companies Act, 1948—

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.

"67. (1) Where a company has passed a resolution for reducing share capital, it may apply by petition to the Court for an order confirming the reduction."

Save in special circumstances, 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, any creditor of the company who in the case of winding up would have a right of proof, shall be entitled to object to the reduction. Such creditors can get payment in full or in part at the direction of the Court. (Section 67 (2).)

Order Confirming Reduction.

The Court, if satisfied, with respect to every creditor of the company who 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. (Section 68 (1).)

Where the Court makes an order confirming a reduction of the share capital of a company, it may, if for any special reason it thinks proper so to do, direct 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 those words shall, until the expiration of the period specified, be deemed to be part of the name of the company. (Section 68 (2).)

The resolution for reduction and the order must be registered, and the resolution takes effect from the date of the registration. (Section 69.)

The resolution for reduction, when registered, must be embodied in every copy of the memorandum issued after its registration. (Section 69.)

The Court may require the company to publish the reasons for reduction with a view to giving proper information to the public. (Section 68.)

(See COMPANIES, SHARE CAPITAL.)

RE-ENTRY. In leasehold property, if the lessee fail to fulfil the covenants contained in the lease, it may result in the forfeiture of the lease and the re-entry of the lessor into possession of the land. (See LEASEHOLD.)

RE-EXCHANGE. In the case of a bill which has been dishonoured abroad, the Bills of Exchange Act, 1882, Section 57 (2), provides that the holder may recover from the drawer or an indorser, and the drawer or an indorser who has been compelled to pay the bill may recover from any party liable to him the amount of the re-exchange with interest thereon until the time of payment. Where a bill drawn or indorsed in one country is dishonoured in another, the re-exchange is calculated by ascertaining the sum for which a bill at sight, at the existing rate of exchange, drawn at the time and place of dishonour on the place where the drawer or indorser resides, can be obtained, so as to produce at the place of dishonour the amount of the dishonoured bill plus cost of protest, commission, postage and other expenses in connection with the dishonour.

REFER TO DRAWER. The answer put upon a cheque by the drawee banker when dishonouring a cheque in certain circumstances. The most usual circumstance is where the drawer has no available funds for payment or has exceeded any arrangement for accommodation. The use of the phrase is not confined to this case however; it is the proper answer to put on a cheque which is being returned on account of the service of a garnishee order; it is likewise properly used where a cheque is returned on account of the drawer being involved in bankruptcy proceedings.

Although in *London Joint Stock Bank* v. *Macmillan & Arthur*, [1918] A.C. 777, it was suggested by Lord Shaw that "Refer to Drawer" could be used in cases where there were any reasonable grounds for suspecting that the cheque had been tampered with, such an answer would rarely be given in practice for any reasons other than those given above.

In *Flach* v. *London & South Western Bank, Ltd.* (1915), 31 T.L.R. 334, Mr. Justice Scrutton said that the words "Refer to Drawer" in their ordinary meaning amounted to a statement by the bank: "We are not paying; go back to the drawer and ask why" or else "go back to the drawer and ask him to pay."

The unjustified use of the phrase, however, may involve a banker in an action for libel.

In *Frost* v. *London Joint Stock Bank* (1906), 22 T.L.R. 760, the general rule was laid down that where words are not obviously defamatory, it is not what they might convey to a particular class of persons that is the test, but what they would naturally suggest to a person of average intelligence.

The abbreviation "R/D" is not permitted on cheques presented through the Clearing House; the words must be written in full. (See ANSWERS.)

REFEREE IN CASE OF NEED. The person to whom a holder of a bill of exchange may apply, in case of the bill being dishonoured by non-acceptance or non-payment. The name of a referee may be inserted in a bill by the drawer or any indorser, and is usually put in the left-hand bottom corner of the bill, as "In case of need apply to A & B Bank, London," or "In case of need with the English Bank, Ltd., London," or "In need with X & Y Bank."

By Section 15 of the Bills of Exchange Act, 1882: "The drawer of a bill and any indorser may insert therein the name of a person to whom the holder may resort in case of need, that is to say, in case the bill is dishonoured by non-acceptance or non-payment. Such person is called the referee in case of need. It is in the option of the holder to resort to the referee in case of need or not as he may think fit."

No liability attaches to the referee in case

of need until he has accepted for honour. (See ACCEPTANCE FOR HONOUR, BILL OF EXCHANGE.)

REFERENCE. In the absence of an introduction when opening an account, a reference should be required. If the referee is not known to the bank, steps should be taken to follow up his reliability and trustworthiness (by banker's inquiry, for example). Apart from the desirability of confirming that the new customer is reputable, the banker will get no protection from liability for conversion in respect of any stolen cheques paid in by the new customer, on the grounds of negligence. (See NEGLIGENCE.)

REGISTER OF CHARGES. The Registrar of Companies keeps with respect to each company a register of all charges requiring registration under Section 95 of the Companies Act, 1948. The register is kept at Bush House, London, W.C.2, and may be inspected by any person on payment of the prescribed fee, not exceeding one shilling for each inspection. (See REGISTRATION OF CHARGES for charges and mortgages requiring registration.)

In addition to the register at Bush House, under Section 104 every limited company must keep at its registered office 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. There is a penalty not exceeding £50 for any wilful omission to register.

The register is open to inspection by any creditor or member of the company without fee and to any other person on payment of a fee not exceeding one shilling.

It will be noted that the register kept at the company's own office contains all charges given by the company, whereas the register kept at Bush House is reserved for the nine specified types of charge mentioned in Section 95. (See REGISTRATION OF CHARGES.)

REGISTER OF COMPANIES. (See REGISTRAR OF COMPANIES.)

REGISTER OF DEBENTURE HOLDERS. Every register of holders of debentures of a company is to be open to the inspection of the registered holder of any such debentures and of any holder of shares in the company. (Section 87 of the Companies Act, 1948.) (See DEBENTURES.)

REGISTER OF DIRECTORS. The Companies Act, 1948 (Section 200), requires that every company shall keep a register containing the names, any former Christian name or surname, the nationality, addresses, and occupations of its directors or managers, particulars of any other directorships held and dates of birth (where the age limit of 70 applies). A copy thereof must be sent to the Registrar of Companies, and from time to time he must be notified of any change therein. If this Section is not complied with, the company shall be liable to a fine. (See DIRECTORS.)

REGISTER OF MEMBERS OF COMPANY. Section 110 of the Companies Act, 1948, provides—

"(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."

By the Companies Act, 1948—

Trusts not to be Entered on Register.

"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."

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."

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."

Inspection of Register.

The register must be open, for not less than two hours each day, to the inspection of any member gratis, and of any other person on payment of one shilling. (Section 113 (1).)

Any member or other person may obtain a copy of the register, or any part, on payment of sixpence for every 100 words. (Section 113 (2).)

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."

REGISTER OF MORTGAGES. (See REGISTER OF CHARGES.)

REGISTER OF SHIPS. (See SHIP.)

REGISTER OF TRANSFERS. (See TRANSFER REGISTER.)

REGISTERED BOND. A bond which is payable to the person named therein and whose name is registered in the books of the Government or company issuing it. It is transferable by deed. A bearer bond, on the other hand, is payable to the bearer thereof and passes from one person to another by simple delivery. A bearer bond is a negotiable instrument, but a registered bond is not. (See REGISTERED COUPON-BOND.)

REGISTERED CAPITAL. The capital of a company as authorised by its Memorandum of Association. Called also the "nominal" and "authorised" capital. (See CAPITAL.)

REGISTERED CHARGE. A legal mortgage of registered land is made by the execution of a charge by deed, which is lodged at the Land Registry with a duplicate and the relative land certificate. A charge certificate is issued, in which is stitched the original charge. (See "Land Registration" under MORTGAGES OF REGISTERED LAND.)

REGISTERED COUPON-BOND. The bond is registered in the name of the owner, and is transferable by deed only. The dividends are paid by means of coupons attached to the register certificate, and income tax is deducted on payment of the coupons. (See BEARER BONDS, NATIONAL DEBT.)

REGISTERED DEBENTURE. A debenture undertaking to pay a specified person or his assigns, as opposed to a debenture payable to bearer. The method of transfer is specified in the debenture. (See DEBENTURE.)

REGISTERED LAND. (See LAND REGISTRATION.)

REGISTERED OFFICE. The Companies Act, 1948, provides—

"Section 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.

The name of the company must be painted or affixed in "letters easily legible" on the outside of its registered office and every office or place where it carries on business. (See Section 108, under NAME OF COMPANY.)

"437. A document may be served on a company by leaving it at or sending it by post to the registered office of the company."

REGISTERED STOCK. That is, stock which is registered in the owner's name in the company's register of members. It can be transferred to another person only upon a document of transfer being duly executed by the registered holder. The dividends upon the stock are paid by means of warrants sent out from the company's office.

REGISTRAR, COUNTY COURT. An account opened in this form is a public account. (See PUBLIC ACCOUNT.)

REGISTRAR OF COMPANIES. The Companies Act, 1948, enacts—

"Section 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."

"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.

"(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."

When a certificate of incorporation is given by the registrar in respect of any association, it is conclusive evidence that all the requirements in respect of the registration of the company have been complied with.

When a certificate of the registration of any mortgage or charge is given by the registrar, it is conclusive evidence that all the requirements of the Companies Act have been complied with.

A register of mortgages is kept by the registrar. The register is open to inspection by any person on payment of one shilling. (See COMPANIES, REGISTRATION OF CHARGES.)

REGISTRARS IN BANKRUPTCY. Section 102 of the Bankruptcy Act, 1914, provides as follows—

"102. (1) The registrars in bankruptcy of the High Court, and the registrars of county courts having jurisdiction in bankruptcy, shall have the powers and jurisdiction in this Section mentioned, and any order made or act done by such registrars in the exercise of the said powers and jurisdiction shall be deemed the order or act of the Court.

"(2) Subject to general rules limiting the powers conferred by this Section, a registrar shall have power—

"(*a*) To hear bankruptcy petitions, and to make receiving orders and adjudications thereon:

"(*b*) To hold the public examination of debtors:

"(*c*) To grant orders of discharge where the application is not opposed:

"(*d*) To approve compositions or schemes of arrangement where they are not opposed:

"(*e*) To make interim orders in any cases of urgency:

"(*f*) To make any order or exercise any jurisdiction which by any rule in that behalf is prescribed as proper to be made or exercised in chambers:

"(*g*) To hear and determine any unopposed or *ex parte* application:

"(*h*) To summon and examine any person known or suspected to have in his possession effects of the debtor or to be indebted to him, or capable of giving information respecting the debtor, his dealings or property.

"(3) The registrars in bankruptcy of the High Court shall also have power to grant orders of discharge and certificates of removal of disqualifications, and to approve compositions and schemes of arrangement.

"(4) A registrar shall not have power to commit for contempt of court.

"(5) The Lord Chancellor may by order direct that any specified registrar of a county court shall have and exercise all the powers of a registrar in bankruptcy of the High Court." (See BANKRUPTCY.)

REGISTRATION OF BANKS. Section 21 of the Bank Charter Act, 1844, provided for the registration at the Inland Revenue Office,

Somerset House, of every banking firm or company in England and Wales, together with the deposit of a return showing the names, residence, and occupation of every member and the name of every place where business was carried on. This registration was necessary in order to enable the provisions of the Bank Act, 1844, relating to note issues to be enforced. By the Companies Act, 1862, joint-stock banks were exempted from the provisions of Section 21 of the Act of 1844; their registration is now effected under Section 124 of the Companies Act, 1948. Partnerships carrying on banking business and foreign and colonial banks with branches in this country which are not registered under the Companies Act, 1948, still comply with Section 21 of the Act of 1844, but such banks incorporated outside the United Kingdom are required, in addition to registration under the Bank Act, 1844, to send to the Board of Trade under Section 407 of the Companies Act, 1948, a copy of its Memorandum and Articles, particulars of its directors, and the address of a person in Great Britain who is authorised to accept service of any legal document.

REGISTRATION OF BUSINESS NAMES. The Registration of Business Names Act, 1916, provides for the registration of firms and persons carrying on business under business names.

By Section 1: "Subject to the provisions of this Act—

"(*a*) Every firm having a place of business in the United Kingdom and carrying on business under a business name which does not consist of the true surnames of all partners who are individuals and the corporate names of all partners who are corporations without any addition other than the true Christian names of individual partners or initials of such Christian names;

"(*b*) Every individual having a place of business in the United Kingdom and carrying on business under a business name which does not consist of his true surname without any addition other than his true Christian names or the initials thereof;

"(*c*) Every individual or firm having a place of business in the United Kingdom, who, or a member of which, has either before or after the passing of this Act changed his name, except in the case of a woman in consequence of marriage;

shall be registered in the manner directed by this Act."

Every firm or person required under this Act to be registered shall deliver to the registrar at the register office in that part of the United Kingdom in which the principal place of business is situated, a statement in writing in the prescribed form. (Section 3.)

The particulars required shall be furnished within fourteen days after the firm or person commences business. (Section 5.)

Whenever a change occurs in any of the particulars registered in respect of any firm or person, a statement of the change must be sent to the registrar within fourteen days after such change. (Section 6.)

"Where any firm or person by this Act required to furnish a statement of particulars or of any change in particulars shall have made default in so doing, then the rights of that defaulter under or arising out of any contract made or entered into by or on behalf of such defaulter in relation to the business in respect to the carrying on of which particulars were required to be furnished at any time while he is in default, shall not be enforceable by action or other legal proceeding either in the business name or otherwise." The defaulter may apply to the court for relief against the disability. "Nothing herein contained shall prejudice the rights of any other parties as against the defaulter in respect of such contract as aforesaid." (Section 8.)

The registrar's certificate of the registration, or a certified copy thereof, shall be kept exhibited in a conspicuous position at the principal place of business of the firm or individual. (Section 11.)

Section 116 of the Companies Act, 1947, provides that the power conferred by Section 14 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. The section further provides for penalties if any person carries on business with a name that has been refused registration. The section also cancels the requirement of Section 18 of the Registration of Business Names Act, whereby a person's nationality of origin must be stated in trade circulars, business letters, etc.

The registrar of companies in London and

Edinburgh shall be the registrar for the purposes of this Act. (Section 15.)

Any person may inspect the documents filed by the registrar, or require a certificate of the registration of any firm or person, or a copy of or extract from any registered statement to be certified by the registrar or assistant registrar, on payment of a small fee. (Section 16.)

Every individual and firm required by this Act to be registered shall, in all trade catalogues, trade circulars, showcards, and business letters, on or in which the business name appears, have mentioned in legible characters, in the case of an individual, his present Christian name or the initials thereof and present surname, any former Christian name or surname. In the case of a firm, the same particulars must be given of all the partners. (Section 18.)

The register of business names is kept at Bush House, Aldwych, London, W.C.2.

REGISTRATION OF CHARGES. The provisions respecting the registration of mortgages and charges under the Land Charges Act, 1925, are contained in the articles LAND CHARGES and MORTGAGES; and mortgages on land in the jurisdiction of a local deeds registry in the article YORKSHIRE REGISTRY OF DEEDS; and mortgages on ships in the article SHIP.

A summary of registration of mortgages and charges and of searches in the appropriate registers is given under MORTGAGE.

The provisions respecting the registration of mortgages and charges by companies are contained in this article.

The Companies Act, 1948, with regard to the registration of mortgages and charges created by a company, provides as follows—

Registration of Charges with Registrar of Companies.

"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 thereby conferred, 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;

"(*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 trade mark or on a copyright or a licence under a copyright."

[The "fixed date" referred to above means, in relation to the charges (*a*) to (*f*), 1st July, 1908, and to the charges (*g*) to (*i*), 1st November, 1929. "Charge" includes mortgage. (Section 95 (10).) A company had, within six months after 1st November, 1929, to register any charge, under paragraphs (*g*), (*h*), (*i*), created by the company before that date and remaining unsatisfied at that date. (Section 91, Companies Act, 1929).]

"(3) In the case of a charge created out of the United Kingdom comprising solely property situate outside the United Kingdom, the delivery to and the receipt by the registrar of a copy, 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 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.

"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."

Where a company registered in England acquires any property which is subject to a charge, the company shall cause particulars of the charge to be delivered to the registrar within twenty-one days after the date on which the acquisition is completed. (Section 97.)

The registrar of companies shall keep, with respect to each company, a register of all the charges requiring registration. The registrar shall give a certificate of the registration of any charge, and the certificate shall be conclusive evidence that the requirements as to registration have been complied with. The register shall be open to inspection by any person on payment of a fee not exceeding one shilling. (Section 98.)

"99. (1) The company shall cause a copy of every certificate of registration given under Section 82 to be indorsed 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 indorsed on any debenture or certificate of debenture stock issued by the company before the charge was created."

"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 misstatement 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 misstatement shall be rectified."

Every company shall keep a copy of every instrument creating any charge requiring registration 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. (Section 103.)

In *Ladenburg & Co.* v. *Goodwin, Ferreira & Co., Ltd. (in Liquidation), and Garnett (the Liquidator)*, [1912] 3 K.B. 275, the plaintiffs made advances to the defendant company on the company's drafts. The company gave the plaintiffs copies of the bills of lading and invoices of goods shipped by them and a letter stating that the company hypothecated the goods or the proceeds thereof to the plaintiffs. The goods were sold by the defendant company to their customers on the terms that all charges on the goods after they left the warehouse were paid by the customers, to whom a six months' credit was given. The bills of lading were made out to the customers' orders. The company having gone into liquidation the plaintiffs claimed the proceeds of the shipments received by the defendant company or the liquidator. Pickford, J., in the course of his judgment said: "It is difficult to see how any valid charge or mortgage on the goods could have been given to the plaintiffs, for there was no interest in the goods remaining in the defendant company (except in the possible case of stoppage *in transitu*). Therefore the only thing remaining which could be the subject of the hypothecation was the proceeds of the goods. . . . That constitutes a book debt owing by the customer to the defendant company. . . . Was it a charge on the book debts of the defendant company within the meaning of Section 93 (1) (*e*) of the Companies (Consolidation) Act, 1908? . . . I come to the conclusion that they were in this case charges on the book debts of the defendant company, and as they were not

registered they are void against the liquidator, and there must be judgment for the defendants."

Where a company wrote to a Government Department authorising it to remit all moneys due under a contract direct to the company's bankers, and stating that such instructions were to be regarded as irrevocable unless the bank should consent to their cancellation, it was held that the letter amounted to an equitable assignment by way of security for the bank overdraft. It constituted a charge on book debts of the company under Section 95, and not having been registered under that section, it was void as against the liquidator. (*Re Kent and Sussex Sawmills, Ltd.*, [1946] 2 All E.R. 638.)

Vacation of Registration.

Section 100 provides for the vacation of the registration of a charge. (See under MEMORANDUM OF SATISFACTION.)

The Act imposes heavy penalties on the company and officials for neglect to register mortgages and charges. (Section 96.)

The registrar's certificate of registration should be deposited when a charge is given on the company's property.

Every company must keep at its registered office a register of mortgages and 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." (Section 104.) The register shall be open to the inspection of any creditor or member, without fee, and to any other person on payment of one shilling. (Section 105.)

By Section 426 (see under REGISTRAR OF COMPANIES) any person may inspect the documents kept by the registrar on payment of a fee not exceeding one shilling.

When the title deeds of a company are given as security, either with or without a memorandum of deposit, it is a charge, and must be registered at the date of the deposit or within twenty-one days therefrom.

An agreement by a company to create a charge or issue debentures at some future date or in certain circumstances *whenever called upon to do so* does not create a present right to any security and hence does not require registration under Section 95. (*In re Gregory Love & Co., Francis* v. *The Company*, 1916.) But where money is advanced to a company on the understanding that debentures charged on any asset of the company shall be issued as security, the lender at once gets a charge in equity, and accordingly such an agreement confers a present equitable right in equity and should be registered.

It is to be noted that, by Section 95, a charge must be registered within twenty-one days after the date of its creation. In *Esberger & Son, Ltd.* v. *Capital and Counties Bank, Ltd.* (1913), 109 L.T. 140, the company deposited deeds with the bank, with a formal document of charge, on 17th September, 1910, duly executed but without a date. On 14th June, 1911, the date was filled in by the bank manager as 14th June, 1911. It was contended that the security was void by reason of non-registration within twenty-one days from 17th September, 1910. For the bank it was argued that if a document is dated on a certain day and is to secure future advances and future advances are not made until a later date the creation of the charge is the date when the future advances are made, and when, therefore, the document becomes an effective document to secure actual money, and is not the date when the actual charge was executed. Sargant, J., in the course of his judgment said that "where there is an instrument creating or evidencing a mortgage or charge I feel clear that, on the true meaning of Section 9 of the Companies (Consolidation) Act, 1908, the date of the creation of the mortgage or charge is the date when that instrument was executed, and is not the date when any money is subsequently advanced so as to make an effective charge for the amount of that money."

A preliminary to making an advance to a company is to make a search of the company's file at Bush House to see if any charges by way of debenture or otherwise affect the security offered. An inspection can also be made, if desired, of the company's own register of charges kept at its registered office, to ascertain if any charges are outstanding of a type not requiring registration at Bush House.

It should be particularly noted that if a mortgage or charge, as above specified, is not registered within twenty-one days it is void against a liquidator and any creditor, so far as security on the company's property is concerned, and the money payable under the charge will then rank only as an unsecured debt.

The fact that the holder of a mortgage

debenture, issued by a company and registered in accordance with Section 95, had express notice of the prior creation and non-registration within the required period by that Section of a first mortgage does not prevent the unregistered first mortgage from being declared void as against the subsequent registered mortgage debenture, having regard to the provisions of the Section, notice not being material in the case of a creditor, it not being fraud to take advantage of legal rights the existence of which might be assumed to be known to the parties interested. (*In re Monolithic Building Co. Ltd.*; *Tacon* v. *The Company* (1915), 112 T.L.R. 619.)

When certificates for stocks and shares, life policies, warrants for goods, or negotiable instruments belonging to a company are given as security, the charge does not require registration with the registrar of companies.

A mortgage or charge on a ship or any share in a ship given by a company must be registered with the registrar of companies. (Section 95, Companies Act, 1948.) It must also be registered under the Merchant Shipping Act, 1894. Registration under the latter Act has the effect of fixing the priority of mortgages. (See SHIP.)

The prescribed fee for registration of a mortgage or charge is—

Where the amount does not exceed £200, 10s.

Where the amount exceeds £200, £1.

The fee for the registration of a series of debentures is—

Where the total amount of the series does not exceed £200, 10s.

Where the total amount of the series exceeds £200, £1.

By the Land Registration Act, 1925 (Section 60), where a company is proprietor of any registered land, any mortgage, debenture, or other incumbrance created by the company must be registered or protected by caution under this Act, in addition to the required registration under the Companies Act, 1948.

By the Land Charges Act, 1925, in the case of a charge on land (not registered land) for securing money, created by a company, registration under Section 95 of the Companies Act, 1948, shall be sufficient in place of registration under this Act. (Section 10, (5).) If the company's land is within the jurisdiction of the Yorkshire Deeds Registry, it is necessary, in addition, to register in the appropriate local Deeds Registry a legal mortgage, a puisne mortgage, and a debenture containing a specific charge upon land.

A mortgage by a society registered under the Industrial and Provident Societies Act, 1893, does not require registration as the society does not come within the scope of the Companies Act, 1948. A charge by such a society over "personal chattels" requires registration as a bill of sale. (See the case under INDUSTRIAL AND PROVIDENT SOCIETIES.) As to registration of a debenture creating in favour of a bank a floating charge on farming stock, see Section 14, under AGRICULTURAL CREDITS ACT, 1928.

REGISTRATION OF DEEDS. As distinct from registration of titles a system of registration of deeds and other documents relating to land obtains in the three Ridings of Yorkshire. (See YORKSHIRE REGISTRY OF DEEDS.) The system formerly applied also to land in the County of Middlesex, but as from 1st January, 1937, the system of deeds registration has given place to registration of title. (See LAND REGISTRATION, MIDDLESEX REGISTRY OF DEEDS.)

REGISTRATION OF TRANSFERS. (See TRANSFER OF SHARES.)

REICHSBANK. The Central Bank of Germany. It is under complete Government control although its stock is held by the public.

RE-INSURANCE. One of the first principles of insurance is to limit the liability of the company under any particular contingency to a fixed sum. When insurance offices cover very large gross amounts, it may be necessary in order to restrict their liability to the prescribed limits, to re-insure with another company for amounts in excess of their own retentions. The sole or principal business of re-insurance companies is to provide facilities for re-insurance.

RE-ISSUE OF BILL OF EXCHANGE. (See NEGOTIATION OF BILL OF EXCHANGE.)

RE-ISSUE OF DEBENTURE. (See DEBENTURE.)

"RELATION BACK." See Section 37, Bankruptcy Act, 1914, under ADJUDICATION IN BANKRUPTCY.

RELEASE. From 1841 to 1845 freehold land was conveyed by means of a deed called a "release." (See LEASE AND RELEASE.)

REMAINDER. After the death of a person who has a life interest in a property, if the land does not revert to the grantor of the life interest, or his heirs, but passes to some other person, the interest of that person in the land is called a "remainder."

A remainder is sometimes erroneously

referred to as a reversion, or reversionary interest.

It is a contingent remainder if the vesting of the remainder is dependent upon an uncertainty, as for example where the interest has to pass, after the death of the life tenant, to a child after attaining a certain age. When the child has attained that age it becomes a vested remainder. (See REVERSION.)

REMAINDERMAN. The person entitled to a "remainder" (*q.v.*).

REMEDY ALLOWANCE. This is the name given to an allowance made in connection with the making of coins. The Coinage Act defines the standard weight and fineness of each coin, but as in the making of coins it is impossible to produce them absolutely in accordance with the prescribed figures, the Act allows certain variations, the "remedy allowance," from that standard weight and fineness. In gold coins the remedy for fineness is two parts in 1,000, and in silver coins it was four, altered by the Coinage Act, 1920, to five parts in 1,000. For the "remedy" allowed in weight per piece, see the first Schedule to the Coinage Act, under COINAGE.

REMISIER. (French.) A "half-commission man." A person who introduces business to a stockbroker and receives a share of the broker's commission. (See STOCKBROKING TRANSACTIONS.)

REMITTANCE. The word is commonly used in banks to describe an amount of coin or notes, or a parcel of cheques or bills sent from one office or person to another. A remittance is inward or outward according as it is received by or dispatched from the bank.

REMOTE PARTIES. The "remote parties" to a bill of exchange are those who are not in immediate relationship, e.g. the acceptor and an indorsee. (See PARTIES TO BILL OF EXCHANGE.)

RENEWAL OF BILL. By arrangement amongst the parties to a bill of exchange the bill may be renewed, that is, a new bill may be accepted in place of the old one to run for a further period of time. If the second bill is dishonoured the rights of the parties on the first bill (if the bill was left with the holder) are revived, but those parties who did not assent to the renewal are discharged.

RENT CHARGE. An annual payment arising out of real estate. (See under LEGAL ESTATES.)

RENTES. The name given to the annual interest payable upon the Government debts of France, Austria, Italy, Greece, and some other countries. The word is also applied to the debts themselves, e.g. "Rentes" in France has the same meaning as "Consols" in this country.

RENUNCIATION. The giving up of a right. In the Stamp Act, 1891, the reference to the stamp duty is: RENUNCIATION. See RECONVEYANCE and RELEASE. (See under MORTGAGE.)

In the case of an issue of new shares, a shareholder may accept the number of shares provisionally allotted to him, or he may renounce his rights by signing a form of renunciation. In *Re Pool Shipping Co., Ltd.* (1919), 122 L.T. 338, where directors had power, under the articles of association, to refuse any transfer of shares of which they might not approve, and a shareholder renounced his rights to certain new shares in favour of C, the directors refusing to register C, it was held that the renunciation of rights to shares was not a transfer of shares within the meaning of the articles of association and that the directors were not entitled to refuse to register C, as holder of the shares.

As to the stamp duty, see under LETTER OF ALLOTMENT. (See LETTER OF RENUNCIATION.)

When the holder of a bill at or after its maturity renounces his rights against the acceptor, the bill is discharged, but the renunciation must be in writing, unless the bill is delivered up to the acceptor. (See PAYMENT OF BILL.)

RE-PRESENT. (See PRESENT AGAIN.)

REPRESENTATION. (See under PERSONAL REPRESENTATIVES.)

REPUTED OWNER. The person who is, from the situation in which goods are found, reputed to be the owner thereof. The Bankruptcy Act, 1914, includes amongst the property which is divisible amongst the creditors of a bankrupt, "all goods being, at the commencement of the bankruptcy, in the possession, order, or disposition of the bankrupt, in his trade or business, by the consent and permission of the true owner, under such circumstances that he is the reputed owner thereof; provided that things in action other than debts due or growing due to the bankrupt in the course of his trade or business shall not be deemed goods within the meaning of this Section." (Section 38, s.s. 2 (*c*).)

REQUISITIONS ON TITLE. The requisitions are the inquiries submitted by the solicitor for an intending purchaser to the

solicitor for the vendor, as to points and questions in connection with the deeds and the title to the property. The requisitions are written on one half of a sheet of paper and the replies are placed opposite. If the replies are not complete or satisfactory, further observations may be made.

RESCISSION BOND. A bond issued for guarantees rescinded. The Argentine Government rescinded certain contracts in connection with the railways and issued instead 4 per cent Rescission Bonds.

RESERVE. The cash in hand, that is the notes and coin shown on the assets side of the Bank of England Return (Banking Department), is called the Reserve. It is the money which the Bank keeps to meet demands made on it both by its private depositors and the deposit banks which keep their surplus balances at the Bank of England. The proportion of the Reserve to the Bank of England's liabilities to the public is rarely allowed to fall below 30 per cent and has been in the neighbourhood of 50 per cent. The necessity for keeping so large a proportion of its deposits in the form of cash arises because the Bank of England's principal deposits are those made by the other banks and thus the Reserve forms the ultimate banking reserve of the country. (See BANK RETURN.) The item "Reserve" on the balance sheet of a joint stock bank comprises undistributed profits and is, strictly speaking, a Reserve Fund, being invested in gilt-edged securities.

The undistributed profits of the Bank of England appear on the Weekly Statement (Banking Department) as "Rest" (*q.v.*).

RESERVED LIABILITY. That part of a banking company's share capital which, when so resolved by the shareholders, cannot be called up except in the event of the company being wound up. Section 60 of the Companies Act, 1948, provides—

"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."

Reserved liability was created by an Act of 1879, following the granting of limited liability to shareholders in banks. To offset this protection to investors in bank shares, reserved liability was instituted to give a measure of protection to bank depositors. The Act provided that limited companies could increase the nominal amount of their shares, with a condition that a specified proportion of such nominal increase could not be called up except in the case of liquidation of the company.

See also Section 64 under COMPANY, UNLIMITED. The reserve liability cannot be mortgaged. (See COMPANIES, SHARE CAPITAL.)

RESERVED INTEREST. Interest upon a debt which is doubtful and is not fully secured by realisable security should not be credited to profit and loss account, but should, in the meantime, be placed aside in a suspense interest or reserved interest account.

RESERVES. Sums set aside out of the profits of a company and not distributed as dividends. They are created for the purpose of meeting contingencies for equalising dividends, etc.

Article 117 of Table A of the Companies Act, 1948, says—

"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."

The Eighth Schedule to the Companies Act, 1948, provides as regards a company's balance sheet—

"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."

It is provided, however, that banking and discount companies are not subject to the above requirements.

RESIDUARY DEVISEE. Under a will, the person who takes all the real property which remains after the devisees have received their shares.

RESIDUARY LEGATEE. Under a will, the person who takes all the personal property which remains after the legatees have received their shares.

RESIDUE. That which remains of a deceased person's estate after all the debts and legacies have been paid.

RESIGNATION. A Scotch law term, almost obsolete, for a document which surrendered an inferior estate to the immediate superior.

RESOLUTIONS. The resolutions passed at the meetings of companies are the various matters which the members present have decided upon. An ordinary resolution may be passed by a bare majority. There are also extraordinary and special resolutions.

A company's articles of association often provide that certain acts shall only be done by extraordinary resolution.

The provisions of the Companies Act, 1948, with regard to extraordinary and special resolutions are as follow—

"Section 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."

By Section 143, where articles have been registered, a copy of every special and extraordinary resolution 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.

The cases in which special resolutions are necessary, as provided by the above Act, are referred to in the following Sections—

Section 18. (See NAME OF COMPANY.)

Section 5. (See MEMORANDUM OF ASSOCIATION.)

Section 203. (See MEMORANDUM OF ASSOCIATION.)

Section 10. (See ARTICLES OF ASSOCIATION.)

Section 66. (See REDUCTION OF SHARE CAPITAL.)

Section 60. (See RESERVE LIABILITY.)

Section 222. (See WINDING UP BY THE COURT.)

Section 278. (See WINDING UP, VOLUNTARILY.) (See COMPANIES.)

RESPONDENTIA. An instrument by which the master of a ship hypothecates the cargo as security for the repayment of money borrowed at a foreign port in order to effect repairs which are absolutely necessary to enable the ship to resume its voyage. Such a loan is repayable only if the ship arrives in safety at its destination. The captain has no authority to create such a charge except in case of necessity, and where he has no other means of raising the money and is unable to communicate with the owners. These instruments have now fallen into disuse. (See BOTTOMRY BOND.)

REST. The item called "Rest" which appears on the liabilities side of the weekly "Return" of the Bank of England corresponds with the item "Reserve Fund" in the balance sheets of other banks, with this difference, that the profits are added to the "Rest" from time to time, and the dividends to the bank proprietors are paid out of this account. The amount is not allowed to fall below £3,000,000. (See BANK RETURN.)

The word "rest" is also applied to the break which the banker makes in the accounts of his customers, quarterly or half-yearly, for the purpose of entering the amount of interest and charges due to date. When this has been done, the account is balanced and ruled off, the balance being carried forward to the next quarter's or half-year's account.

RESTRAINT ON ANTICIPATION. Where property was settled upon a married woman in order that she might receive the income as it became due, it was usual for the deed to include a restraint on anticipation, by which she was prevented from mortgaging or giving a charge of any kind upon the future income. By the Law Reform (Married Women and Tortfeasors) Act, 1935, restraint on anticipation was abolished. Existing restraints, or those imposed in any instrument executed before 1st January, 1936, continued to be or would in due course become effective. The will of a testator who died after 31st December, 1945, would be deemed to have been executed after 1st January, 1936, whatever its actual date. Thus a time limit was put on a testator's imposition of restraint on anticipation. (See MARRIED WOMAN.)

But by the Married Women (Restraint on Anticipation) Act, 1949, all such restraints were abolished.

RESTRICTION OF RIBBON DEVELOPMENT ACT, 1935. The two main purposes of this Act are to provide for the imposition of restrictions upon development along road frontages and to enable highway authorities to acquire land for the construction and improvement of roads or for preserving amenities or controlling development in the neighbourhood of roads.

Hence where building land or land ripe for building development is held as security, its value may be affected or its development restricted by the provisions of the Act. Any action by the highway authority must

be advertised in the local papers, and plans of affected land and a register of consents given to owners of land may be inspected free of charge at the office of the highway authority. Owners of land and persons interested therein can ensure getting advice of any action by the highway authority by registering themselves with the latter body. The Act does not apply to the Administrative County of London.

RESTRICTIVE INDORSEMENT. An indorsement is restrictive which prohibits the further negotiation of a bill or cheque, or which expresses that it is a mere authority to deal with the bill as thereby directed, as "Pay John Brown only." (See INDORSEMENT.)

RESTRICTIVE THEORY. The theory that in a commercial crisis the Bank of England should restrict its issue of notes, but in the great crises of 1847, 1857 and 1866 the Bank Charter Act which embodied the restrictive theory had to be suspended, and the situation was saved by the Government granting permission to the Bank to expand its issue beyond the limit fixed by the Act. H. D. Macleod, in *The Elements of Banking*, wrote—

"It is therefore irrefragably proved by the unanimous opinion of the most eminent commercial authorities, and the clear experience of 100 years that the restrictive theory in a commercial crisis is a fatal delusion; and that when a commercial panic is impending, the only way to avert and allay it is to give prompt, immediate, and liberal assistance to all houses who can prove themselves to be solvent." On the outbreak of war with Germany in 1914, the Bank was authorised to suspend the Act, but the authority was not acted upon. (See BANK CHARTER ACT, EXPANSIVE THEORY.)

RETENTION MONEY. Money which is retained for a certain time after completion of a contract; e.g. if a contract has been made for £5,000 it may be agreed that 10 per cent of the money due to the contractor shall be retained till, say, six or twelve months after the completion of the contract. If an assignment of retention money is given as security, notice of the assignment must be given to, and an acknowledgment received from, the person who is liable to pay the money to the contractor. (See DEBTS—ASSIGNMENT OF.)

RETIRING A BILL. Strictly speaking, to retire a bill is to pay it at or before maturity. More usually the phrase is used to denote the redemption of the bill by the drawer or acceptor from the holder before maturity. A banker holding a discounted bill will use discrimination in permitting it to be retired before its due date, and will usually advise the acceptor if the drawer or an indorser retires it. There are obvious possibilities of raising money on forged acceptances, if discounted bills can be withdrawn before maturity, and the practice also lends itself to accommodation acceptances.

RETIRING A BILL UNDER REBATE. Where a documentary bill has been discounted the acceptor may wish to obtain the attached documents of title before maturity, and if the bill is marked "documents against payment," he must arrange with the holder to retire it, i.e. pay it before it is due. In consideration of so doing, a rebate is allowed by the holder, usually calculated at one-half per cent above the London Joint Stock Bank Deposit Rate on the amount of the bill. (See DOCUMENTARY BILL.)

RETOUR SANS PROTÊT (or **RETOUR SANS FRAIS**). French, return without protest.

These words placed upon a foreign bill by an indorser, near to his signature, mean that the bill, in the event of its dishonour, is to be returned without protest; that is, no expense is to be incurred. They apply only to the indorser who uses them, and do not indicate the wish of a subsequent indorser who has not used the words.

RETURNED CHEQUE (OR BILL). A cheque may be returned unpaid for many reasons. The drawer may not have sufficient funds to meet it; he may be dead or bankrupt; he may have instructed his banker not to pay it; the banker may have received some legal notice preventing him from paying any further cheques upon the drawer's account; or the cheque itself may not be in order, the date or the amount or other material part may have been altered, and not have been initialed by the drawer; the amount in words and figures may differ; the drawer's signature may not be recognised; an indorsement may be wrong; it may be post-dated; or crossed to two bankers; or it may be stale through having been issued so long. These are some of the principal reasons necessitating the return of a cheque.

If there be on the face of a cheque any reasonable ground for suspecting that it has been tampered with, a refusal to pay is warranted. (See *London Joint Stock Bank, Ltd.* v. *Macmillan and Arthur*, under PAYMENT OF CHEQUE.)

36—(B.1535)

When the cheque is returned an "answer" is marked upon it by the drawee banker, usually in the top left-hand corner. A number of the different "answers" which are in use are given in the article ANSWERS.

After settlement of a local exchange a cheque cannot strictly be returned later in the day, unless by agreement between the bankers.

Cheques received otherwise than through the Clearing House may be returned on the day following the receipt, but in practice they are usually returned on the same day. When a bill is to be noted, it may be noted on the day of its dishonour and must be noted not later than the next succeeding business day. (See NOTING, PROTEST.) A cheque or bill cashed over the counter by the paying banker cannot subsequently be returned. When a bill is presented on the morning of its due date, a country banker is under no obligation to retain it till the close of business before returning it, but there may be a local custom to retain it.

The banker to whom a cheque is returned for any reason, except a technical flaw in an indorsement, obtains his money again from the party from whom he received the cheque in the first place, delivering up the cheque itself in exchange. In the case of a faulty indorsement (e.g. a cheque payable to "Thomas Cluff" indorsed "Thomas Clough") which the collecting banker knows to be *bona fide*, it is customary for him to write on the back of the cheque "Indorsement confirmed" or "Payee's indorsement confirmed," adding his own signature and re-presenting. Notice of dishonour should nevertheless be given to the customer who paid in the cheque. When the cheque is re-presented, the drawee banker usually pays it; he is not, however, in law bound to do so.

Bankers usually keep a list of all the cheques and bills they return unpaid, as well as a list of cheques and bills which have been returned to them, and in each case the reason of the "return" is noted in a column provided for the purpose.

When a cheque or bill is received back "dishonoured," unless it is delivered to the customer against cash, the banker charges his customer's account with the amount and sends the unpaid article to the customer. The notices of dishonour to indorsers will be given by the customer. Bankers take an acknowledgment from the customer, or a written authority to debit the account, on giving him the dishonoured instrument. If the customer's account will not admit of the dishonoured bill or cheque being charged to it, the amount should be debited to Overdue Bills Account, and the banker should give notice to all parties. Any balance there may be in the customer's account may be held as a part payment.

A returned cheque may be debited to the account of the customer for whom it was sent for collection, even if not indorsed by him. The customer for whom a bill was discounted is not liable, in the event of its dishonour, unless by special agreement, if the bill was not indorsed by him.

A banker usually cancels his indorsement on a returned bill. (See DISHONOUR OF BILL OF EXCHANGE.)

RETURNS. Cheques or bills which are returned either through lack of funds or some irregularity in the instruments themselves are commonly called "returns."

Returns are also the various statements, daily, weekly, monthly, half-yearly, or at other times, which are sent by branches to the head office.

REVENUE ACT, 1883. Section 17 provides: "Sections 76 to 82, both inclusive, of the Bills of Exchange Act, 1882, and Section 25 of the Forgery Act, 1861, shall extend to any document issued by a customer of any banker and intended to enable any person or body corporate to obtain payment from such banker of the sum mentioned in such document and shall so extend as if the said document were a cheque: provided that nothing in this Act shall be deemed to render any such document a negotiable instrument." The documents referred to are conditional forms of cheque, i.e. crossed orders for payment with receipt attached. Such documents are not legally transferable. They may safely be collected only for the named payee and if paid with clear evidence of transfer, such as a third party's indorsement, the paying banker might lose the protection of Section 80 even if paid in conformity with the crossing. (See RECEIPT ON CHEQUE.)

REVERSE COUNCILS. At such times as the Indian Government experienced an insufficient demand in this country for rupees, and the rate of exchange was thereby liable to an undesirable fall, steps might be taken to correct the exchange position by offering for sale in India sterling drafts to be paid out of the balance held in London by the India Council. Such drafts were known as "Reverse Councils," in contradistinction from the rupee drafts ("Councils") which were offered for sale in London.

REVERSE STOCK CHEQUE. An instrument used when paying for stocks and shares purchased in a foreign centre. For example: A New York buyer of stock or shares on the London market may be asked by the seller to arrange for cash to be paid out in London against delivery of the shares. The buyer must then arrange with his banker for the latter's London agent to make payment in sterling against presentation of the securities attached to a draft in dollars, drawn by the seller on the buyer. The New York banker will thus be selling his customer sterling for immediate payment in London, but will himself receive reimbursement in dollars only and when the stock cheque reaches New York, there to be presented to and paid by the buyer. The New York banker must therefore allow in his selling rate a margin both for interest and for the cost of transmission and insurance of the shares.

REVERSION. REVERSIONARY INTEREST. Where a lease of land is granted for a number of years, the lessor remains possessed of the reversion, that is the interest in the estate remaining to the lessor after the lease has been granted. For example, if John Brown grants a lease to John Jones for a certain number of years, at the end of that period, that is at the expiration of the lease the property reverts to John Brown, or to his representatives. The person to whom the property reverts is called the reversioner.

REVERSIONER. (See REVERSION.)

REVOCABLE CREDIT. (See DOCUMENTARY CREDIT.)

REVOCATION. By the Stamp Act, 1891, the stamp duty is—

	£	s.	d.
REVOCATION of any use or trust of any property by any writing not being a will	0	10	0

REVOLVING CREDIT. A credit under which an indefinite amount may be drawn as opposed to a fixed credit, which permits of drawings by one or more drafts up to a fixed sum, the reaching of which means the exhaustion of the credit. In *Nordskog* v. *National Bank* (1922), 10 Ll. L.R. 652 an expert witness defined the term as follows: "A revolving credit is one for a certain sum which is automatically renewed by putting on at the bottom that which is taken off at the top." It may be a blank credit—a rare variety—where an unlimited amount may be drawn at any time; or it may be for an unlimited amount in total but with a stated limit to the amounts of drafts that may be outstanding at any one time. Sometimes it is for an unlimited sum, but with a limit on the amount which may be drawn at any one time. Another type provides for a limited amount to be drawn within a given period, and once the limit has been utilised in the given period, no further drawings can be made until the new period commences.

RIBBON DEVELOPMENT. (See RESTRICTION OF RIBBON DEVELOPMENT ACT.)

RIGGING THE MARKET. A Stock Exchange term to signify the artificial forcing up of prices by speculators with the object of inducing the public to become purchasers at the false prices.

ROOT OF TITLE. A purchaser of land can, unless there is an agreement to the contrary, require the title to be deduced for thirty years. Previous to 1st January, 1926, the period was forty years. It may be necessary to go back further than thirty years to obtain a good root of title. The deed which is taken as the beginning of the title is called the root of title.

A twenty years' title is often accepted as sufficient.

If it is stipulated in a contract for sale of a property, or in the printed "conditions of sale," that the title shall commence with a certain deed or will, then that deed or will becomes the root of title.

A mortgage deed or purchase deed is a good root of title, but a general devise of property in a will is not a good root of title, as the will does not identify the property.

Section 45 (6), of the Law of Property Act, 1925, provides as follows—

"Recitals, statements, and descriptions of facts, matters and parties contained in deeds, instruments, Acts of Parliament or statutory declarations, twenty years old at the date of the contract, shall, unless and except so far as they may be proved to be inaccurate, be taken to be sufficient evidence of the truth of such facts, matters and descriptions."

By the Law of Property Act, 1925, Section 45 (1): "A purchaser of any property shall not require the production, or any abstract or copy, of any deed, will or other document, dated or made before the time prescribed by law, or stipulated, for commencement of the title. . . ." (See TITLE DEEDS.)

ROYALTY. A rent, payable to the landlord, of a certain percentage of the profits derived from the working of a mine upon his estate, or from the minerals reserved to him, or so much per ton from the minerals raised.

RULE IN CLAYTON'S CASE. (See CLAYTON'S CASE.)

RULE IN ROYAL BRITISH BANK v. TURQUAND. In *Royal British Bank* v. *Turquand* (1856), 25 L.J. Q.B. 327, it was decided that, if on the constitution of the company, directors might have been authorised to do certain things (e.g. enter into contracts), an outsider was entitled to assume that the directors had been so authorised. In other words, if an official of a company is found doing acts on behalf of the company which the articles permit him to do when duly authorised, a party doing business with the company is entitled to assume that the authority which the articles say the official can use has actually been put in his hands by the company. Where the articles of a company provided for the drawing of bills by the managing director as and when authorised by the board, and he drew bills without such authority and in fraud of the company, it was held that the company could not repudiate the bills, as outside parties were entitled to assume that the managing director was actually vested with the authority which the articles provided could be put in his hands. (*Dey* v. *Pullinger* (1921), 37 T.L.R. 10.)

The rule is not capable of simple application, however, and has been severely modified in two directions. Firstly, a party cannot benefit by the rule if at the time he entered into business contracts with the company he did not know of the delegation of powers, i.e. if he was not cognisant of the contents of the articles of the company. (*Kredit Bank Cassel* v. *Schenkers, Ltd.*, [1927] 1 K.B. 826.) Secondly, the rule will not operate in favour of a party dealing with a company where the transaction is unusual or abnormal or not one which the person engaging the company might be expected to be trusted with. (*Houghton's & Co.* v. *Nothard Lowe & Wills*, [1928] A.C. 1.)

RUNNING BROKER. The term applied to the type of bill broker who earned his livelihood by taking bills from the major sources of supply in the City—merchants, accepting houses, foreign, colonial, and exchange banks—and disposing of them forthwith on a commission basis to the discount houses and the banks.

During the last twenty years the discount market has been subject to a process of amalgamation and absorption, and but three firms of running brokers have survived. They now function, however, on similar lines to the discount houses.

RUPEE. The Indian unit of currency, also used in Burma, Ceylon, Mauritius, and other places.

RUPEE PAPER. The name formerly given to the "enfaced" promissory notes of the Indian Government.

The dividend, or interest, on the Rupee Paper was paid by drafts payable in India, which were obtained either by the holder of the promissory notes presenting them at the India Office, Bank of England, or by having the drafts posted to him by the Bank.

The accrued dividend upon most stocks and shares was included in the price and belonged to the purchaser, but in the case of Rupee Paper it was not taken into the price but was paid by the purchaser to the seller in addition to the purchase price, the amount being shown on the contract note.

The notes were called "enfaced paper" because they bore an announcement on the face that the interest was payable by drafts to be obtained at the Bank of England.

The notes could be converted into stock at the India Office, Bank of England. (See RUPEE.)

RURAL DISTRICT COUNCIL. When a bank is appointed as banker to a Rural District Council, a resolution under seal of the Council should be obtained and the account opened in the name of the Council.

There is no statutory requirement as to the drawing of cheques, but it is prudent to arrange for at least two officials to sign. Cheques are frequently drawn in pursuance of an order of the Council as in the case of County or Borough Councils (*q.v.*).

All borrowings require Government sanction, except those falling under Section 215 (*a*) of the Local Government Act, 1933, or money raised by mortgage of sewage works and plant.

A resolution of the Council should be obtained covering all borrowings. (See LOCAL AUTHORITIES.)

SAFE CUSTODY. It is the custom of bankers to receive and take charge of deed boxes, securities and all manner of articles of value belonging to their customers. When articles are deposited for safe custody, some banks give a form of receipt.

The customer depositing the articles for safe custody may be required to sign the counterfoil bearing the same number as the receipt which he obtains.

This acts as a confirmation from the customer of the articles which he has left to be taken care of.

Where a locked box or sealed packet is received for safe custody, any receipt given therefor should state "contents unknown."

Some bankers, however, do not give any receipts for articles left with them for safe keeping, unless specially requested so to do. They merely keep particulars of them in the safe custody register, and when the customer receives the articles back again he signs an acknowledgment for them in the register. Some bankers, who give no acknowledgments, permit the customer to see the entry of the deposit in the safe custody register.

When articles have been deposited in joint names they should not be given up except on the written authority of all the parties. If one of the depositors has died, the authority of his legal representatives should be obtained before delivery to the survivor or survivors. "The property may not be joint, but common, in which case there is no right of survivorship." (Sir John Paget, *Law of Banking*.)

The modern form of mandate for a joint account provides, however, for the delivery of safe custody items to either or both of two depositors, and in some cases for a good discharge by delivery to the survivor(s) in the case of decease of one of the depositors.

All the executors of a deceased person should join in an authority to give up safe custody articles which were deposited in the name of the deceased.

Where articles are deposited in the names of executors, the signatures of all, or the survivors, should be required before delivery.

Where the lodgment is in the names of trustees, it is particularly necessary to obtain all their signatures before delivery. In *Mendes* v. *Guedalla* (1862), 2 J. & H. 259, where a box containing bearer bonds was lodged for safe custody by three trustees and one of them held the key in order to cut off the coupons half-yearly, it was held that the bankers "ought not to have parted with the box, or allowed more than the coupons to be taken out, without the authority of all the three trustees."

If the customer becomes bankrupt, the directions of his trustee should be obtained.

If a banker receives an authority from a depositor to allow another person to remove a certain article from a box or parcel, the banker must see that only the specified article is taken out.

In the case of *In re De Pothonier, Dent* v. *De Pothonier*, [1900] 2 Ch. 529, the following statement was given as to the practice in London with regard to the safe custody of bearer bonds: "It is a common practice of investors to deposit such bonds with their bankers upon a simple acknowledgment by the bankers of the receipt thereof. In such cases the bankers accept the deposit subject to such responsibility as is imposed upon them by law for their safe custody, and they collect the coupons for their customers, and credit them to the account of the customers, as and when received. From my own knowledge of the course of business in the City, I say that it is a very common practice amongst men of business, and joint stock companies who hold large quantities of bonds, to deposit them with their bankers upon the above terms, and I believe that such practice offers to the owner of the bonds as good a security for the safe and proper custody of such bonds as can be obtained, and is at the same time the most convenient course the bond holder can adopt as regards the collection of interest on the bonds. If bonds to bearer are deposited with bankers in a locked box or other closed receptacle, the bankers do not give any receipt for the bonds, but only a general acknowledgment of receipt of the box, and decline to accept any responsibility for its contents." In the same way it was held that the trustees were "justified in depositing the bonds with the bankers upon those terms, which will not justify the bankers in parting with the bonds except under the authority of all the trustees, but will justify the bankers in cutting off the coupons and collecting them as and when they are due, in the ordinary course."

By the Trustee Act, 1925, a trustee must deposit bearer bonds held by him with a bank for safe custody and collection of income. (See Section 7 under TRUSTEE INVESTMENTS).

By Section 21 a trustee may deposit with a bank any documents relating to the trust. (See under TRUSTEE.)

The acceptance of articles for safe custody makes the banker a bailee, and the extent of his liability as such depends on whether he is a gratuitous bailee or a bailee for reward. A gratuitous bailee "is bound to take the same care of the property entrusted to him as a reasonably prudent and careful man may fairly be expected to take of his own property of the like description." (*Giblin* v. *M'Mullen* (1868), L.R. 2 P.C. 339.) A bailee for reward must use the highest degree of care and use all precautions and devices available in taking care of valuables deposited with him. English banks do not make a practice of making a specific and express charge for safe custody facilities and are consequently gratuitous bailees. In some quarters it is contended that there is valuable consideration in the keeping of the customer's account and that consequently a banker is a bailee for reward. The distinction tends to be academic, however, for a banker gives the same care to the custody of his customer's property as he does to his own valuables. If a banker delivers articles left for safe custody to other than the customer or his authorised agent, or if he fails to deliver them to the right party on demand, he will be liable for conversion quite apart from negligence. A banker is not liable for the theft of his employees provided he has exercised care in his choice of them.

If a banker has doubt as to the genuineness of a signature upon an order for delivery of a safe custody article, or any suspicion as to the authority of the person who presents the order, he is justified in making a delay in fulfilling the order until he has had the signature confirmed by the customer. In the case of *Mrs. Langtry* v. *The Union Bank of London* (which was settled by judgment for the plaintiff by consent for £10,000), the plaintiff's property was obtained from the bank by a person presenting a forged order purporting to be signed by Mrs. Langtry, requesting the bank to hand her box to the bearer.

In the opinion of some authorities a banker has no lien upon securities or articles left with him for safe custody. (See LIEN.) If a safe custody article is to be taken as a security at any time, the customer should sign the necessary document of charge.

The Bank of France makes a specific charge for taking care of securities and valuables for customers.

In America, bankers decline to take charge of articles for safe custody, but they have a system of letting lockers, in the safe deposit department, to customers, at a rent, thus throwing the responsibility and labour of cutting off coupons, etc., upon the customers.

SAFE CUSTODY REGISTER. The securities, boxes, or other articles which may be left by customers with a banker for safe custody are, in some banks, entered in a register with the date when they are left, the name of the owner, and a description of the security or article. If the boxes are numerous they are usually registered in a separate book or in a special part of the ordinary register, and each entry is numbered consecutively, a printed number label being affixed to each box. When an article is given up to the customer, he either signs the register or gives a separate receipt for it, which receipt is kept in some available place and a reference made to it in the register. When an article is given up to a third party, the third party signs the register and a reference is entered to the customer's letter of authority, which should be carefully preserved.

When a safe custody receipt is issued by the banker, the receipt should be returned duly indorsed before the articles can be given up. (See SAFE CUSTODY.)

SALE AND PURCHASE OF BANK SHARES ACT, 1867. Usually called LEEMAN'S ACT (*q.v.*).

SALE OF GOODS ACT, 1893. (56 & 57 Vict. c. 71.) Section 25 provides that where a person has sold goods and continues in possession of them or of the documents of title to the goods and sells or pledges them to any person receiving the same without notice of the previous sale the delivery shall have the same effect as if it were authorised by the owner of the goods; and that where a purchaser obtains possession of the goods or documents and sells or pledges them to any person receiving them without notice of any lien of the original seller, such delivery shall have the same effect as if the person making the delivery were a mercantile agent in possession of the goods or documents with the consent of the owner. This Section is practically the same as Sections 8 and 9 of the Factors Act, 1889. (See FACTORS ACT.)

Section 44 enacts as follows—

"Subject to the provisions of this Act, when the buyer of goods becomes insolvent, the unpaid seller who has parted with the possession of the goods has the right of stopping them *in transitu*, that is to say, he may resume possession of the goods as long as they are in course of transit, and may

retain them until payment or tender of the price."

By Section 46 the unpaid seller may exercise his right of stoppage *in transitu* either by taking actual possession of the goods or by giving notice of his claim to the carrier or other bailee or custodier in whose possession the goods are.

Section 47 provides as follows—

"Subject to the provisions of this Act, the unpaid seller's right of lien or retention or stoppage *in transitu* is not affected by any sale, or other disposition of the goods which the buyer may have made, unless the seller has assented thereto.

Provided that where a document of title to goods has been lawfully transferred to any person as buyer or owner of the goods, and that person transfers the document to a person who takes the document in good faith and for valuable consideration, then, if such last-mentioned transfer was by way of sale, the unpaid seller's right of lien or retention or stoppage *in transitu* is defeated, and if such last-mentioned transfer was by way of pledge or other disposition for value, the unpaid seller's right of lien or retention or stoppage *in transitu* can only be exercised subject to the rights of the transferee."

By Section 16, "where there is a contract for the sale of unascertained goods, no property in the goods is transferred to the buyer unless and until the goods are ascertained." It has been held that so long as goods are unascertained, the fact that an order for delivery is entered into and the goods sold are transferred to the buyer's name in the warehouseman's books has no effect on the transfer of the property. In making advances against produce which forms part of a bulk, a banker should see that the goods are recorded in the warehousekeeper's books in the name of the bank, and that such goods are severed from the bulk so that they can be clearly identified and ascertained.

SANS FRAIS. (French, without expense; in English, usually written "Incur no expense.")

Where the indorser of a bill adds these words to his signature, they mean that no expense is to be incurred over the bill. The words express the wish only of the indorser who uses them and do not apply to any subsequent indorser who has not used them.

SANS RECOURS. These words, the French term for "Without recourse," may be added by the drawer of a bill or an indorser to his signature to negative his own liability to the holder in the event of the bill being dishonoured, but the words would not free an indorser from liability for any forged signature prior to his indorsement. (See DRAWER, INDORSER, WITHOUT RECOURSE.)

SASINES. (See REGISTER OF SASINES.)

SAVINGS BANKS. A Savings Bank is for the deposit of money, the depositor receiving interest thereon. The money and interest may be drawn out by the depositor as and when required. A Savings Bank is not like an ordinary bank, as the depositors cannot usually issue cheques.

The various Acts relating to Savings Banks were consolidated by the Trustee Savings Bank Act, 1863 (26 & 27 Vict. c. 87). (See POST OFFICE SAVINGS BANKS, TRUSTEE SAVINGS BANKS.)

SAVINGS CERTIFICATES. The same as National Savings Certificates (*q.v.*).

SCANDINAVIAN MONETARY UNION. A Union formed in 1873 by Norway, Sweden, and Denmark with the purpose of keeping their respective currencies roughly interchangeable at par. It has not functioned since 1914.

SCHEDULED TERRITORIES. The term applied by the Exchange Control Act, 1947, to the countries comprised in the Sterling Area (*q.v.*).

SCHEME OF ARRANGEMENT. Section 16 (1) of the Bankruptcy Act, 1914, provides: "Where a debtor intends to make a proposal for a composition in satisfaction of his debts, or a proposal for a scheme of arrangement of his affairs, he shall within four days of submitting his statement of affairs, or within such time thereafter as the Official Receiver may fix, lodge with the Official Receiver a proposal in writing, signed by him, embodying the terms of the composition or scheme . . . and setting out particulars of any sureties or securities proposed."

Such a composition or scheme requires the acceptance of a majority in number and three-quarters in value of all proving creditors, and the approval of the Court, which will not be given unless it provides reasonable security for the payment of not less than five shillings in the pound on all unsecured debts in cases where an unconditional discharge would be refused. Acceptance by the creditors and approval by the Court means the discharge of the receiving order. The debtor or any trustee appointed under the scheme is revested with his property and thereupon put into the same position as if he had got his discharge in bankruptcy save for the provision of the scheme or composition.

A scheme of arrangement (made after a receiving order) must not be confused with a deed of arrangement made to avoid bankruptcy proceedings. (See DEED OF ARRANGEMENT.)

SCOTLAND. (See Appendix on SCOTTISH BANKING.)

SCRIP. SCRIP CERTIFICATE. (Scrip is a contraction of "subscription.")

Ordinary certificates are very commonly referred to as "scrip"; but scrip or a scrip certificate is really the document or provisional certificate which is given to a person who has, for example, agreed to take up bonds in connection with a Government loan and has paid the first instalment. Scrip is principally associated with the issue of debentures, or bonds.

A person desirous of obtaining some bonds in a new issue pays to the bank which has the management of the issue a deposit of per cent upon the amount of the bonds required, and requests that he be allotted that amount of bonds at the price of per cent. He agrees to accept the same or any smaller amount that may be allotted to him, and to pay the further sums due on such allotment according to the terms of the prospectus. If his application is successful he receives a letter of allotment stating the amount of bonds which have been allotted to him. At a certain date, the letter of allotment is exchanged for a scrip certificate, a document which states the amount that has been paid towards the price of the bond and sets forth the dates when the remaining instalments are due and the amount of each. A form of receipt is appended for each instalment, which is filled up by the bank whenever an instalment is paid, When all the instalments have been paid the holder is entitled to a duly stamped bond in exchange for the scrip certificate. If an instalment is not paid, it renders all previous payments liable to forfeiture. Where interest will be payable before the bonds are ready to be issued, a coupon is appended at the foot of the scrip certificate. The receipts must not be detached from the scrip certificate, and when remitting the instalments the certificate must accompany the remittance.

The following is a specimen of a scrip certificate—

£100 No. 4623.

FOREIGN GOVERNMENT 5 PER CENT STERLING LOAN OF 19 , FOR £2,000,000, AT 90 PER CENT.

Scrip certificate for £100.

The Bearer of this scrip certificate has paid in respect of One hundred pounds of the above loan, the sum of £10, leaving a balance of £80, payable as follows—

£10 per cent on 1st July, 19 .
£10 per cent on 1st August, 19 .
£10 per cent on 1st September, 19 .
£25 per cent on 1st October, 19 .
£25 per cent on 1st November, 19 .

After payment of the above instalments the Bearer will be entitled to a duly stamped bond in exchange for this scrip certificate. Due notice will be given by advertisement in *The Times* when the bonds are ready for delivery.

Default in payment of any instalment will render all previous payments liable to forfeiture.

For The British Banking Co., Ltd.
Registered JOHN BROWN,
London 19 . General Manager.

Receipt for Instalment of 10 *per cent.*
Due 1st July, 19 .

Received 19, the sum of Ten pounds, being the instalment due 1st July, 19 .

For The British Banking Co., Ltd.,
£10 Cashier.

Receipt for Instalment of 10 *per cent.*
Due 1st August, 19 .

Received 19 , the sum of Ten pounds, being the instalment due 1st August, 19 .

For The British Banking Co., Ltd.,
£10. Cashier.

Receipt for Instalment of 10 *per cent.*
Due 1st September, 19 .

Received 19 , the sum of Ten pounds, being the instalment due 1st September, 19 .

For The British Banking Co., Ltd.,
£10. Cashier.

Receipt for Instalment of 25 *per cent.*
Due 1st October, 19 .

Received 19 , the sum of Twenty-five pounds, being the instalment due 1st October, 19 .

For The British Banking Co., Ltd.,
£25 Cashier.

Receipt for Instalment of 25 *per cent.*
Due 1st November, 19 .

Received 19 , the sum of Twenty-five pounds, being the instalment due 1st November, 19 .

For The British Banking Co., Ltd.,
£25. Cashier.

FOREIGN GOVERNMENT 5 PER CENT STERLING LOAN, 19 .

Coupon for Two pounds ten shillings due 1st December, 19 .

Payable at The British Banking Co., Ltd. London.

£2 10s. 0d.

Stamp Duty on Scrip Certificates was abolished by the Finance Act, 1949.

A coupon attached to a scrip certificate requires to be stamped. (See COMPANIES, INSTALMENT ALLOTMENT, LETTER OF ALLOTMENT, SHARE CAPITAL.)

SEA INSURANCE. (See MARINE INSURANCE POLICY.)

SEAL. An impression in wax, or other soft substance, made by an engraved stamp. Also the engraved stamp itself. At one time the seal was usually attached to the document by a strip of parchment or a cord. As deeds now require to be signed by the parties thereto, the use of the seal has become a mere formality and a simple wafer is frequently used, as in transfers of shares and stocks, instead of an impression in wax.

The letters L.S. inside a circle, thus (LS) which are seen on transfer forms, stand for *locus sigilli*, and mean the place of the seal. They do not, however, act instead of a seal or wafer.

The seal of a company is called its common seal. Every company "shall have its name engraven in legible characters on its seal." If an officer of a company, or any person on its behalf, uses or authorises the use of any seal purporting to be a seal of the company, whereon its name is not engraven as aforesaid, he shall be liable to a fine not exceeding fifty pounds. (Section 108 of the Companies Act, 1948.) The seal of a company is usually affixed in the presence of two directors, who sign the document, which is also countersigned by the secretary or such other person as the directors may appoint for the purpose. A record is kept of each document which is sealed, the entry being initialed by the persons who witnessed the affixing of the seal. The seal is usually kept in a box or case secured by two locks, the keys of which are held by different persons.

Sections 34 and 35 of the Companies Act, 1948, give powers to a company to empower any person, as its attorney, to execute deeds abroad and to have an official seal for use 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.

"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."

Section 36 provides for the authentication of documents—

"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." (See COMPANIES.)

SEAL BOOK. (See COMMON SEAL BOOK.)

SEAMAN'S ALLOTMENT NOTE. (See ALLOTMENT NOTE.)

SEAMAN'S NOTE. (See ADVANCE NOTE.)

SEARCHES. (See summary of registrations and searches under MORTGAGE.)

SECOND-CLASS PAPER. First-class paper includes bank bills and bills bearing names of the highest standing. Where the position is not so good, the bills fall into a second or a third-class position, or even into a still lower class, according to circumstances.

SECOND MORTGAGE. Where a mortgagor has given a first mortgage, he can thereafter create a second and subsequent mortgages on the same property. Moreover the fact that the first mortgage is a legal one will not now debar him from creating subsequent legal mortgages. Before the Law of Property Act, 1925, second mortgages were of necessity equitable ones, for the legal estate was conveyed to the first mortgagee assuming that he took a legal mortgage. A second mortgage will now take the form of a grant of a term of years longer (usually by one day) than the first mortgagee's term (usually 3,000 years).

It is desirable to take a second mortgage in legal and not equitable form, for it is possible in some circumstances for an equitable mortgage to be overridden even if registered.

If a second mortgage is taken as security, notice should be given to the first mortgagee and his acknowledgment obtained, together with confirmation of the amount due to him. He should be asked if he is under any obligation to make further advances, for if so, such further advances will rank in front of the second mortgage. The usual searches should be made to see if any prior incumbrances exist. Usually the relative deeds will be with the first mortgagee, in which case the second mortgage must be registered as a Class C i Charge (puisne mortgage) if a legal mortgage, or C iii Charge (general equitable charge) if an equitable mortgage. Such registration will protect the second mortgagee against subsequent mortgages. If within the jurisdiction of the Yorkshire Registries, registration on the Deeds Register, whether accompanied by the deeds or not, is necessary for a legal mortgage; registration on the Charges Register is necessary if an equitable mortgage is taken without the deeds.

In the case of registered land, a second charge can be taken and registered at the Land Registry, who will issue a certificate of second charge. (See LAND REGISTRATION.)

A second mortgage is not a desirable banking security; the paper margin between the value of the property and the first mortgage tends to shrink on realisation; a first mortgagee is not bound to consider a second mortgagee in realising the security, and although a second mortgagee is entitled to sell without obtaining the first mortgagee's permission, he must redeem the first mortgage before applying the proceeds of sale to his mortgage. Frequently a second mortgagee has perforce to take over the first mortgage in order to deal effectively with the security. (See MORTGAGE, NOTICE OF SECOND MORTGAGE.)

SECOND OF EXCHANGE. (See BILL IN A SET.)

SECRECY. One of the terms of the relationship between banker and customer is that the former will keep the latter's affairs secret, and every member of a bank's staff is required to sign a declaration of secrecy as regards the business of the bank.

The occasions when a banker is discharged from his duty of secrecy were summed up in the case of *Tournier* v. *National Provincial Bank, Ltd.*, [1924] 1 K.B. 461. They are—

1. Where disclosure is under compulsion of law (e.g. an order made under the Bankers' Books Evidence Act or information given to the Director of Public Prosecutions concerning a company's account, under Sections 169 (2) and 334 (5) of the Companies Act, 1948).

2. Where there is a duty to the public to disclose.

3. Where the interests of the bank require disclosure (e.g. where a bank issues a writ for repayment of an advance stating thereon the amount due or where demand is made on a guarantor for the amount owing by the customer).

4. Where the disclosure is made with the express or implied consent of the customer.

The duty of secrecy does not cease with the closing of the customer's account. (See BANKER'S OPINIONS.)

SECRET COMMISSION. Where an agent corruptly accepts any consideration as an inducement to act contrary to the interests or business of his principal, or any person corruptly gives such consideration to the agent, it is a misdemeanour. (See PREVENTION OF CORRUPTION ACT, 1906.)

SECRET OR HIDDEN RESERVES. Reserves which do not appear in the published

statement of accounts of a business. Such reserves may be created by excessive depreciation of fixed assets and by taking no account of appreciation in the value of assets which remain in the balance sheet at cost prices. Where secret reserves are accumulated as a matter of caution, as in the case of banks, they do not offend against sound finance but they are the subject of criticism when created to conceal an abnormal profit or when used to cover up losses and to pay dividends in years of heavy trading losses. (See under RESERVES.)

SECURED CREDITOR. "A person holding a mortgage charge or lien on the property of the debtor, or any part thereof, as a security for a debt due to him from the debtor." (Bankruptcy Act, 1914, Section 167.) (See PROOF OF DEBTS.)

SECURED NOTE. The Grand Trunk Railway Company of Canada, three years 6 per cent secured note, may be quoted as an example. The note provides that on 1st October, 19... without days of grace, for value received, the undersigned company promises to pay to the order of itself £200 at..... with interest thereon from ..... at the rate of 6 per cent per annum, payable half-yearly, on presentation of the coupons attached as they severally mature. As security for the due fulfilment of the company's obligations to the note holders, certain debenture stock of the company is issued to a bank which acts as trustee for the holders. The notes may be registered in the holder's name.

SECURITY. Information regarding the various forms of securities, and the charges, etc., will be found under the respective headings. (See ADVANCES, AMERICAN SHARE CERTIFICATES, BEARER BONDS, BILL OF LADING, BILL OF SALE, BOND OF CREDIT, CERTIFICATE, COLLATERAL SECURITY, DEBENTURE, DEBTS—ASSIGNMENT OF, DOCK WARRANT, GOODS, GUARANTEE, INSCRIBED STOCK, LIEN, LIFE POLICY, NEGOTIABLE INSTRUMENTS, SHARES, SHIP, SUBROGATION, TITLE DEEDS.)

SEIGNIORAGE. SEIGNEURAGE. Originally, the word was applied to that part of the income of the King or seigneur which was derived from the coinage of metal by the Mint. Since the year 1666 the coinage of gold has been free of charge. The word is now commonly used to apply to the profit which the Government makes on the manufacture of cupro-nickel and bronze coins. These coins are token money, and the value which is affixed to them by law is greater than the value of the metal of which they are composed, and it is from that difference that the profit is obtained. (See BRASSAGE.)

SEISIN. SEIZIN. Possession. (See LIVERY OF SEISIN.)

By the Stamp Act, 1891, the stamp duties are—

	£	s.	d.
SEISIN. Instrument of seisin given upon any charter, precept of clare constat, or precept from chancery, or upon any wadset, heritable bond, disposition, apprising, adjudication, or otherwise of any lands or heritable subjects in Scotland . .	0	5	0
And any NOTARIAL INSTRUMENT to be expeded and recorded in any register of sasines	0	5	0

SELLING OUT. If a purchaser on the Stock Exchange fails to take up at the appointed time the securities which he agreed to buy, the seller can "sell" out against him; that is, he can instruct the Stock Exchange official broker to sell the securities, and any loss which arises must be paid by the purchaser. (See BUYING IN.)

SEQUESTRATION. In Scotland a decree of sequestration is equivalent to an adjudication of bankruptcy in England.

The word is also applied to the placing of a property, about which there is a dispute, in the hands of a third party until the dispute is settled.

SEQUESTRATION OF A BENEFICE. When a benefice is vacant and before a new incumbent is appointed, the finances of the living are administered by a sequestrator, appointed by the Diocesan Bishop. The Parochial Church Council has nothing to do with the duties of sequestration, nor has the sequestrator anything to do with the Parochial Church Council. The income of the benefice is entirely distinct from the church funds. A sequestrator's duties are to receive the income of the benefice, to make such payments therefrom as are necessary for the services of the church, and to protect the property of the benefice. A special account should be opened by the sequestrator entitled "Sequestration Account of the Benefice of X," and if more than one sequestrator is appointed, both or all must sign cheques, etc. The sequestration document should be produced when the account is opened and overdrafts are usually permitted in anticipation of income; interest

on such overdraft is a lawful charge upon the account.

SET, BILL IN A. (See BILL IN A SET.)

SET-OFF. In law, set-off consists of the total or partial merging of a claim of one person against another in a counter-claim by the latter against the former. Whilst set-off may be given by agreement it is essentially a statutory right or a right created by Rules of Court. The first statute giving a defendant a right to plead a set-off was passed in 1729 and re-enacted in 1735. These statutes are now repealed and their substance is found in the Rules of the Supreme Court. Where no right of set-off exists in law, it may be created by agreement express or implied, such as a course of mutual dealing.

A banker has a right of set-off in respect of different accounts of his customer which are in the same right and provided there is no agreement to the contrary. Thus there is no right of set-off against the credit balance on the account of a trustee or executor in respect of a debt on his private account. But if the trust account were in debit, a right of set-off would exist against the credit balance on the personal account of the trustee, for ordinarily he is personally liable for the borrowing on the trust account. A credit balance on an executor's account cannot be set off against a debit balance on the deceased's account, neither can a credit balance on the deceased's account be set off against a debit balance on the executor's account, for set-off may only be claimed if both debts have arisen either before or after death.

A partner's credit balance cannot be set off against a debit balance on the firm's account unless several liability has been established. A credit balance on a firm's account cannot be set off against a debit balance on a partner's private account.

Credit balances on a solicitor's client account cannot be set off against moneys owing on the solicitor's other accounts. (Solicitors Act, 1933, Section 8.)

Where an auctioneer's private account was overdrawn, a bank was held entitled to set off against it the credit balance on the customer's auction mart account notwithstanding that the balance thereon comprised clients' moneys. (*Martin* v. *Rock Eyton.*)

In respect of local authorities, a loan or overdraft in connection with one undertaking cannot be set off against moneys appropriated to another, for such sums are in the nature of trust moneys raised for a specific object.

The conditions under which a right of set-off may be exercised depend on whether the accounts are "stopped" or "running" accounts. In the case of stopped accounts the right of set-off accrues automatically. That is to say, where accounts are broken by death of the customer, they may be combined before paying over to the legal personal representatives of the deceased; where a garnishee order is served in respect of a customer having more than one account in his own right, any debit balances may be set off before accounting to the judgment creditor.

Where the accounts are still operative, however, opinions differ as to whether a right of set-off accrues without notice. The case of *Garnett* v. *McKewan* (1872), 27 L.T. 560 is high legal authority for the proposition that a banker may set off different accounts of his customer without notice, whether such accounts are kept at the same or different branches. Here, where a credit balance at one branch was appropriated to meet a dormant overdraft at another branch, resulting in the dishonour of cheques at the first branch, it was held that there was no special contract or usage proved to keep the accounts separate and that while it might be proper and considerate to give notice to a customer of intention to combine accounts, there is no legal obligation on a bank to do so, arising either from express contract or course of dealing.

In *Greenhalgh* v. *Union Bank of Manchester*, [1924] 2 K.B. 153, it was said, however, "If a banker agrees with his customer to open two or more accounts he has not, in my opinion, without the consent of the customer, any right to move either assets or liabilities from the one account to the other; the very basis of his agreement with his customer is that the two accounts shall be kept separate." This case concerned the appropriation by the bank of the proceeds of matured bills, and some authorities consider that the above remarks are not part of the judgment, but *obiter dicta*.

Sir John Paget considered that a banker can combine several accounts in the same right, unless by agreement, earmarking, course of business, there is an obligation to keep them separate. He recommended, however, that due care should be exercised for the customer's credit and the dishonour of outstanding cheques avoided if possible.

In practice, a banker would not arbitrarily and without notice exercise his right of set-off unless he had an agreement to that

effect. The custom of taking a "set-off letter" is very prevalent, but such an agreement does not create a right of set-off—it is rather evidence that the banker has not waived it and it avoids awkward situations that might arise if cheques were dishonoured without notice.

A deposit account may be set off against an overdraft, for the dishonour of cheques does not arise.

A credit balance on current account cannot be set off against a loan account without notice unless payment of the loan has been demanded or unless there is an agreement to combine without notice.

Section 31 of the Bankruptcy Act, 1914, provides as follows—

"Where there have been mutual credits, mutual debts or other mutual dealings, between a debtor against whom a receiving order shall be made under this Act and any other person proving or claiming to prove a debt under the receiving order, an account shall be taken of what is due from the one party to the other in respect of such mutual dealings, and the sum due from the one party shall be set off against any sum due from the other party, and the balance of the account, and no more, shall be claimed or paid on either side respectively; but a person shall not be entitled under this Section to claim the benefit of any set-off against the property of a debtor in any case where he had, at the time of giving credit to the debtor, notice of an act of bankruptcy committed by the debtor and available against him."

Under the above Section a banker may, in the event of his customer's bankruptcy, set off a credit balance on the account against the contingent liability on any bills he has discounted for the customer. The banker has the same right when a company is being wound up.

(See GARNISHEE ORDER, JOINT ACCOUNT, LIEN, RECEIVER.)

SETTLED LAND. The Settled Land Act, 1925, consolidated the enactments relating to settled land, including the amendments contained in the Law of Property Act, 1922.

After 1925 every settlement of a legal estate in land *inter vivos* will have to be effected by two deeds, a "vesting deed" and a "trust instrument." The former vests the land in the tenant for life of the whole fee simple or the absolute interest in a lease; and the latter declares the trusts of the settled land.

A settlement is a deed, or will, or other instrument under which any land stands for the time being limited, for example, in trust for any person by way of succession, or limited to or in trust for a married woman.

Trust Instrument.

The trust instrument shall—

(1) Declare the trusts affecting the land;
(2) Appoint trustees of the settlement;
(3) Contain the power, if any, to appoint new trustees;
(4) Set out any powers intended to be conferred by the settlement in extension of those conferred by this Act;
(5) Bear any *ad valorem* stamp duty which may be payable (whether by virtue of the vesting deed or otherwise). (Section 4.)

Where a settlement is created by a will, the will becomes the trust instrument, and the personal representatives shall hold the settled land on trust to convey it to the person who is the tenant for life. (Section 6.)

Vesting Deed.

By the vesting deed the legal estate in the land is conveyed to the tenant for life.

A vesting deed shall contain the following particulars—

(1) A description of the settled land.
(2) A statement that the land is vested in the person to whom it is conveyed upon the trusts from time to time affecting the settled land.
(3) The names of the trustees of the settlement.
(4) The name of the person entitled to appoint new trustees. (Section 5.)

Where a settlement is created by will the personal representatives of the testator hold the land in trust and, when required, convey it to the tenant for life. This conveyance is effected by a vesting assent, in which the representatives assent to the vesting of the property and supply the same particulars as in a vesting deed.

On the death of a tenant for life, if the land remains settled land, his representatives convey it to the next tenant for life. (Section 7.)

There is no stamp duty on a vesting or other assent (Section 14), but a vesting deed requires a 10s. fixed stamp.

(See as to special executors for settled land under PERSONAL REPRESENTATIVES.)

Deed of Discharge.

On the termination of a settlement, the trustees must execute a deed of discharge

declaring that they are discharged from the trust. A purchaser is then entitled to assume that the land has ceased to be settled land. (Section 17.)

Dispositions of Settled Land.

"Disposition" includes a mortgage, charge by way of legal mortgage, lease, and every other assurance of property except a will.

Any disposition by a tenant for life, unless authorised by this Act or any other statute, or powers in the vesting deed, shall be void, except to convey such equitable interests as he has under the trust instrument.

If any capital money is payable in respect of a transaction, a conveyance to a purchaser of the land shall only take effect if the capital money is paid to or by the direction of the trustees or into Court.

Notwithstanding anything to the contrary in the vesting instrument or the trust instrument, capital money shall not, except where the trustee is a trust corporation, be paid to or by the direction of fewer persons than two as trustees of the settlement. (Section 18.)

Tenant for Life.

A tenant for life is the person of full age who is for the time being beneficially entitled under a settlement to possession of settled land. (Section 19.)

Various other limited owners have powers of a tenant for life, for example, a married woman of full age entitled to land for an estate in fee simple, or for a term of years absolute. (Section 21.) Since the passing of the Married Women (Restraint on Anticipation) Act, 1949, a married woman is not fettered by any restraint on anticipation.

Land vested in trustees for charitable, ecclesiastical, or public trusts is deemed to be settled land, and the trustees have the powers of a tenant for life and of trustees of a settlement. A purchaser (including a mortgagee) of such land is bound to see that any consents or orders requisite for authorising the transaction have been obtained.

Part II of the Act defines the powers of a tenant for life, to sell, exchange and lease the settled land.

The tenant for life has power to borrow money for the various purposes as detailed in Section 71, which includes money required to discharge an incumbrance on the settled land, or to pay for any improvement authorised by this Act or by the settlement, or to extinguish any manorial incidents, etc. He may raise the money so required on the security of the settled land, or of any part thereof, by a legal mortgage, and the money so raised shall be capital money.

Capital money arising under this Act shall not be paid to fewer than two trustees, unless the trustee is a trust corporation. (Section 94.) See also the provisions of Section 18 referred to above.

A purchaser or mortgagee is not concerned with the trusts of a settlement, or whether the vendor or mortgagor is in fact a tenant for life, or a person having the powers of a tenant for life, or whether the trustees are properly constituted Settled Land Act trustees. He has practically a certified life tenant and certified trustees with whom he can safely deal so long as he observes the above provisions as to capital money.

Section 110 gives protection to a purchaser or mortgagee dealing in good faith with a tenant for life. The purchaser or mortgagee of a legal estate in settled land is not entitled to call for the production of the trust instrument, or any information concerning it, or any *ad valorem* stamp duty thereon. He is entitled, if the last or only principal vesting instrument contains the particulars required by this Act, to assume that—

(1) The person in whom the land is thereby declared to be vested is the tenant for life and has all the powers of a tenant for life;
(2) The persons stated therein to be the trustees are the properly constituted trustees of the settlement;
(3) The particulars required by the Act and contained in the instrument were correct at its date.

Existing Settlements on 1st January, 1926.

The settlement is to be treated as the trust instrument, and the trustee may, and on request of the tenant for life shall, execute a vesting deed declaring that the legal estate is vested in him. (Second Schedule.)

SETTLEMENT. A settlement is an instrument which limits real or personal property, or the enjoyment thereof, to several persons in succession. It may be made by deed or by will. A common example is the deed of settlement made by parties who are about to marry. (See SETTLED LAND.)

(See MARRIED WOMAN, RESTRAINT ON ANTICIPATION.)

By the Stamp Act, 1891, the stamp duty is as follows.

	£	s.	d.
SETTLEMENT. Any instrument whether voluntary or upon any good or valuable consideration, other than a *bona fide* pecuniary consideration, whereby any definite and certain principal sum of money (whether charged or chargeable on lands or other hereditaments or heritable subjects, or not, or to be laid out in the purchase of lands or other hereditaments or heritable subjects or not), or any definite and certain amount of stock, or any security, is settled or agreed to be settled in any manner whatsoever:			
For every £100, and also for any fractional part of £100, of the amount or value of the property settled or agreed to be settled . .	0	5	0
(*Where any instrument is chargeable both as a conveyance operating as a voluntary disposition "inter vivos" under Section 74 of the Finance* (1909–10) *Act*, 1910, *and as a settlement, it shall be charged with duty as a conveyance in accordance with that Section. See* CONVEYANCE.)			
Exemption.			
Instrument of appointment relating to any property in favour of persons specially named or described as the objects of a power of appointment, where duty has been duly paid in respect of the same property upon the settlement creating the power or the grant of representation of any will or testamentary instrument creating the power.			
And see Sections 104, 105, and 106.			

As to Settlement of Policy or Security.

"104. (1) Where any money which may become due or payable upon any policy of life insurance, or upon any security not being a marketable security, is settled or agreed to be settled, the instrument whereby the settlement is made or agreed to be made is to be charged with *ad valorem* duty in respect of that money.

"(2) Provided as follows—

"(*a*) Where, in the case of a policy, no provision is made for keeping up the policy, the *ad valorem* duty is to be charged only on the value of the policy at the date of the instrument:

"(*b*) If in any such case the instrument contains a statement of the said value, and is stamped in accordance with the statement, it is, so far as regards the policy, to be deemed duly stamped, unless or until it is shown that the statement is untrue, and that the instrument is in fact insufficiently stamped.

Settlements when not to be Charged as Securities.

"105. An instrument chargeable with *ad valorem* duty as a settlement in respect of any money, stock, or security is not to be charged with any further duty by reason of containing provision for the payment or transfer of the money, stock, or security, or by reason of containing, where the money, stock, or security is in reversion or is not paid or transferred upon the execution of the instrument, provision for the payment, by the person entitled in possession to the interest or dividends of the money, stock, or security, during the continuance of such possession, of any annuity or yearly sum not exceeding interest at the rate of four pounds per centum per annum upon the amount or value of the money, stock, or security.

Where several Instruments, one only to be Charged with Ad Valorem *Duty.*

"106. (1) Where several instruments are executed for effecting the settlement of the same property, and the *ad valorem* duty chargeable in respect of the settlement of the property exceeds ten shillings, one only of the instruments is to be charged with the *ad valorem* duty.

"(2) Where a settlement is made in pursuance of a previous agreement upon which *ad valorem* settlement duty exceeding ten shillings has been paid in respect of any property,

the settlement is not to be charged with *ad valorem* duty in respect of the same property.

"(3) In each of the aforesaid cases the instruments not chargeable with *ad valorem* duty are to be charged with the duty of ten shillings."

SETTLEMENT OF ACCOUNT. (See PASS BOOK.)

SETTLEMENTS—SETTLOR BANKRUPT. Voluntary settlements by a person who subsequently becomes bankrupt are dealt with by Section 42 of the Bankruptcy Act, 1914—

Avoidance of Certain Settlements.

"(1) Any settlement of property, not being a settlement made before and in consideration of marriage, or made in favour of a purchaser or incumbrancer in good faith and for valuable consideration, or a settlement made on or for the wife or children of the settlor of property which has accrued to the settlor after marriage in right of his wife, shall, if the settlor becomes bankrupt within two years after the date of the settlement, be void against the trustee in the bankruptcy, and shall, if the settlor becomes bankrupt at any subsequent time within ten years after the date of the settlement, be void against the trustee in the bankruptcy, unless the parties claiming under the settlement can prove that the settlor was, at the time of making the settlement, able to pay all his debts without the aid of the property comprised in the settlement, and that the interest of the settlor in such property passed to the trustee of such settlement on the execution thereof.

"(2) Any covenant or contract made by any person (hereinafter called the settlor) in consideration of his or her marriage, either for the future payment of money for the benefit of the settlor's wife or husband, or children, or for the future settlement on or for the settlor's wife or husband or children, of property, wherein the settlor had not at the date of the marriage any estate or interest, whether vested or contingent, in possession or remainder, and not being money or property in right of the settlor's wife or husband, shall, if the settlor is adjudged bankrupt and the covenant or contract has not been executed at the date of the commencement of his bankruptcy, be void against the trustee in the bankruptcy, except so far as it enables the persons entitled under the covenant or contract to claim for dividend in the settlor's bankruptcy under or in respect of the covenant or contract, but any such claim to dividend shall be postponed until all claims of the other creditors for valuable consideration in money or money's worth have been satisfied.

"(3) Any payment of money (not being payment of premiums on a policy of life assurance) or any transfer of property made by the settlor in pursuance of such a covenant or contract as aforesaid shall be void against the trustee in the settlor's bankruptcy, unless the persons to whom the payment or transfer was made prove either—

"(*a*) that the payment or transfer was made more than two years before the date of the commencement of the bankruptcy; or

"(*b*) that at the date of the payment or transfer the settlor was able to pay all his debts without the aid of the money so paid or the property so transferred; or

"(*c*) that the payment or transfer was made in pursuance of a covenant or contract to pay or transfer money or property expected to come to the settlor from or on the death of a particular person named in the covenant or contract and was made within three months after the money or property came into the possession or under the control of the settlor:

but, in the event of any such payment or transfer being declared void the persons to whom it was made shall be entitled to claim for dividend under or in respect of the covenant or contract in like manner as if it had not been executed at the commencement of the bankruptcy.

"(4) 'Settlement' shall, for the purposes

of this Section, include any conveyance or transfer of property." (See BANKRUPTCY.)

In *re Hart; ex parte Green* v. *Hart & Lomas* (1912), 107 L.T. 368, a bankrupt made a voluntary transfer of shares to his daughter within two years before his bankruptcy. After he had committed an available act of bankruptcy the daughter transferred the shares to a *bona fide* purchaser for value who had no notice of the act of bankruptcy. Cozens-Hardy, M.R., in the course of his judgment, said: "It has been decided that the word 'void' in Section 42 must be construed as meaning 'voidable,' and not 'absolutely void,' and that a *bona fide* purchaser for value from the voluntary donee who has derived title to the property before the date of the commencement of the bankruptcy has a good title against the trustee in bankruptcy,"

SETTLING DAYS. The London Stock Exchange has two "Accounts" in each month, the intervening period being ordinarily fourteen days. The settlement for each account lasts five days. The first is Making-up Day (Wednesday), when arrangements for postponing a settlement or delivery until the next account are made. The second day is Name Day or Ticket Day (Thursday), when a ticket passes in respect of each transaction from broker to jobber, specifying details for the transfer deed. The third and fourth days are known as "intermediate" days (Friday and Monday), when uncompleted business on the Name Day is settled. The fifth day (Tuesday) is called "Account Day," or "Settling Day," or "Pay Day," when securities bought for the Account are delivered, payments for purchases made, and differences settled.

During the war of 1939–1945, settlements were abolished and all dealings were for cash. On 7th October, 1946, the Council of the Stock Exchange announced the resumption of fortnightly settlements as on 10th January, 1947. The settlement period was extended from four to five days by the inclusion of a second intermediate day on Monday, thus making the settling day Tuesday.

Settlements for British Government stocks continue to be for cash.

The settling (pay) day on which securities bought or sold are due to be settled for, is usually shown on the broker's contract note.

Securities payable to bearer are handed over on the settling day. Ten days are allowed in which to complete the delivery of registered securities; but if not delivered within that time the stock or shares may be "bought in" through the official buying-in department, and the loss must be borne by the seller. (See ACCOUNT DAY.)

SEVERAL LIABILITY. (See JOINT AND SEVERAL LIABILITY.)

SEVERALTY. Where a person holds an estate in severalty he holds it entirely in his own right, without being joined in interest with any other person. (See COPARCENERS, JOINT TENANTS, TENANCY IN COMMON.)

SHAREBROKER. (See STOCKBROKER.)

SHARE CAPITAL. SHARES. A share is the right which a member of a company has to a certain proportion of the capital, the capital being the total fund contributed by the members. On the other hand, he is liable for any unpaid balance there may be on the shares he holds. Directors usually have power to decline to register any transfer of shares, not being fully-paid shares, to a person of whom they do not approve, and also to decline to register any transfer of shares on which the company has a lien. (See TRANSFER OF SHARES.) An infant should not be registered as a shareholder, because he can at any time during his minority repudiate the shares. The memorandum of association of a company limited by shares must state the amount of share capital with which the company proposes to be registered, and the division thereof into shares of a fixed amount. (See MEMORANDUM OF ASSOCIATION.)

There are special provisions with regard to the sale and transfer of bank shares. (See LEEMAN'S ACT.)

Shares are known by various names, such as preference, guaranteed, ordinary, deferred, founders' shares and other varieties. The rights of each class of share depend upon the provisions in the memorandum and articles of association, or in special resolutions of the company. The rights attaching to a certain class of shares in one company are not necessarily the same as those in another company. (See Section 59, Companies Act, 1948, given below.)

If authorised by its articles, a company limited by shares may convert its paid-up shares into stock. (See Section 61, below.) This is the only way in which it can create stock. Shares are, practically, divisions of stock in fixed amounts, and a shareholder obtains so many of those divisions, but a stockholder may obtain any (usually even £s) amount of the stock; for example, a share may be for £1, £5, £10, £20, £100 and such-like amounts, each share bearing a distinct

number; whereas a holding of stock may be for £70 or for any amount, and without any distinguishing number. In an ordinary limited company, transfers of stock are generally, for convenience, restricted to certain round sums. In Government stocks, a transfer may be for any odd amount, e.g. £33 16s. 11d.

Before an official quotation on the London Stock Exchange can be obtained for stocks and shares, the certificates must conform to certain regulations of the Council. The articles of association must provide that none of the funds of the company shall be employed in loans upon the security of its own shares, and that fully-paid shares shall be free from all lien. (See QUOTATION ON LONDON STOCK EXCHANGE.)

Shares are taken as security in a variety of ways. The mere deposit of the certificate with an intent to charge gives an equitable mortgage on the shares. In the ordinary course a memorandum of deposit (*q.v.*) is taken when the share certificate is deposited. If it is not proposed to take a legal mortgage but to leave the shares in the borrower's name, notice of lien may be given to the company, although in the case of fully-paid shares with an official quotation this is superfluous, for such shares cannot be the subject of a lien by the company. (See NOTICE OF LIEN.) Sometimes a blank transfer is taken in which the name of the bank's nominee may be inserted as transferee. More rarely, a completed transfer is taken and stamped but held unregistered. (See BLANK TRANSFER.) All such methods do not give complete security and the only way of perfecting the security is to have the shares registered in the name of the bank or its nominee. Otherwise if the registered holder of shares should prove to be merely a trustee, or a nominee of the true owner, the banker, who takes the certificate as security for an advance to the registered holder, may have to surrender the certificate if the true owner intervenes before the banker has had the shares registered in his own name. But when the banker, without notice of any prior equitable charge, has been registered he obtains the legal title to the shares. (See TRANSFER OF SHARES.)

Where the shares are only partly paid, however, they are not, save in exceptional circumstances, transferred, for not only would the bank be liable for calls, but such liability would continue until one year after they had been retransferred or sold.

In most cases a certificate must be surrendered before a transfer of the shares can be effected, but this is not an absolute protection to a banker, as it has been held that a footnote upon a certificate to the effect that no transfer of the shares will be effected without production of the certificate does not constitute a contract and is not binding on the company. (See CERTIFICATE.)

The Companies Act, 1948, provides as follows—

"Section 73. (1) The shares or other interest of any member in a company shall be personal estate, transferable in manner provided by the articles of the company, and shall not be of the nature of real estate.

"(2) 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.

"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."

"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."

"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."

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—

"(1) Make arrangements on the issue of

shares for a difference between the shareholders in the amounts and times of payment of calls on their shares:

"(2) Accept from any member the whole or a part of the amount remaining unpaid on any shares held by him, although no part of that amount has been called up;

"(3) Pay dividend in proportion to the amount paid up on each share where a larger amount is paid up on some shares than on others."

Power 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 the registrar of companies must be given of any increase of share capital, consolidation of share capital, conversion of shares into stock, etc. (Sections 62 and 63.)

Re-organisation of Share Capital.

See provisions of the Companies Act, 1948, under ARRANGEMENT WITH MEMBERS.

A limited company may, by special resolution, determine that any part of its share capital which has not already been called up shall not be capable of being called up, except for the purposes of the company being wound up. (Section 60, see RESERVE LIABILITY.)

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."

The aggregate amount of any outstanding loans under provisions (*b*) and (*c*) shall be shown as a separate item in the balance sheet. (Section 54.)

A company may, if so authorised by its articles, issue redeemable preference shares (Section 58. See REDEEMABLE PREFERENCE SHARES.)

A limited company cannot purchase its own shares without the sanction of the court.

There is usually a provision in a company's articles of association that if a shareholder fails to pay any call, the company shall have power to forfeit and sell the shares in such manner as they think fit. (See LIEN.)

A provision to forfeit shares for failure to pay a debt due (otherwise than in respect of the shares themselves) by the shareholder to the company has been declared invalid on the grounds that its exercise would amount to a reduction of capital, which would be illegal unless sanctioned by the court. (See LIEN.)

Where shares are held by trustees upon a trust of which the company had notice, the company cannot exercise its lien by selling the shares in order to recover a debt due to it by one of the trustees. See under LIEN.

(See BLANK TRANSFER, CALLS, COMPANIES, HOLDING OUT, LEEMAN'S ACT, REDUCTION OF SHARE CAPITAL, STOCK, TRANSFER OF SHARES.)

SHARE CERTIFICATE. (See CERTIFICATE.)

SHAREHOLDERS' LEDGER. This book, commonly called the "share ledger," contains practically the same information as is contained in the register. (See REGISTER OF MEMBERS OF COMPANY.) An account is opened in the ledger for each shareholder, two accounts often appearing on one page, showing on the one side the number of shares, date when acquired, the distinctive numbers, the amount per share and total amount of capital paid, and a reference to the account of the shareholder from whom they were acquired, and on the other side the date of any transfer, a reference to the transferee's account, the numbers of the shares and total amount of capital transferred. Columns are sometimes added to show the balance of shares and capital. Particulars of any lien, or instructions regarding the payment of dividends, or other matters affecting any shareholder are entered at the heading of his account.

SHAREHOLDERS' REGISTER. A book ruled to show the names of shareholders, their addresses and occupations, quantity of shares held, date when acquired, amount paid up, distinctive numbers of the shares, dates of transfers and the numbers of the shares transferred.

(For further information and the Sections of the Companies Act, 1948, regarding the register, see REGISTER OF MEMBERS OF COMPANY.)

SHARE-PUSHING. A colloquial term used to express the operations of "bucket shop" proprietors and dealers in often worthless shares outside the machinery of recognised stock exchanges. In view of the widespread victimisation of the public, a Departmental Committee was appointed by the Government in 1936, which issued its report in August, 1937, its terms of reference being to review and report on "the operations commonly known as share-pushing and share-hawking and similar activities." The Committee recommended that the term "stockbroker" should be confined to members of recognised stock exchanges and that outside operators should be styled "dealers" and be required to enrol themselves on a Board of Trade register. An applicant for registration must give three references—his banker, his solicitor, his stockbroker, and, unless previously in business for three years, must furnish sureties for £500.

The Committee further recommended that the Larceny Act, Section 32, should be strengthened by making not merely "false pretences" (as at present) a crime, but also "fraudulent misrepresentation as to the present or prospective value" of shares offered for sale.

In 1939 the Prevention of Fraud (Investments) Act was passed (*q.v.*).

SHARES. (See SHARE CAPITAL.)

SHARE WARRANT. A share warrant to bearer entitles the holder of it to the fully paid-up shares named therein, and the ownership is transferred by simply handing the warrant to the purchaser.

A company limited by shares may issue share warrants to bearer, in accordance with the regulations contained in Section 83 of the Companies Act, 1948—

"(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."

"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.

"(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."

A share warrant to bearer has been held by mercantile usage to be a negotiable instrument. As it is transferable by mere delivery, the simple pledge of a share warrant, without any transfer form, is all that is required to give a banker a security, but a memorandum or agreement under hand (stamp, 6d.) should be signed by the person depositing such a warrant as security, to show quite clearly the reason why it has been deposited.

Where a share warrant to bearer is purchased in good faith and without notice that it has been stolen, the purchaser obtains a complete title to it, even though the warrant had been stolen by the person who sold it.

The following is a specimen of a share warrant to bearer—

COMPANY, LIMITED.
Share Capital
£ in shares of £10 each.

SHARE WARRANT TO BEARER

for ten shares, of £10 each.

This is to certify that the bearer of this warrant is the proprietor of ten fully paid-up shares No. to of Ten pounds sterling each in the Company, Limited, subject to the Articles of Association of the Company.

Given under the Common Seal of the Company in London this day of 19 .

Secretary. Chairman.

A sheet of coupons for the payment of the dividends is attached to the warrant.

If there are no coupons, the share warrant requires to be presented in order to claim the dividend.

By the Stamp Act, 1891—

SHARE WARRANT and STOCK CERTIFICATE to bearer. A duty of an amount equal to three times the amount of the *ad valorem* stamp duty which would be chargeable on a deed transferring the share or shares or stock specified in the warrant or certificate if the consideration for the transfer were the nominal value of such share or shares or stock (that is, by Finance Act, 1920, £6 per cent on the nominal value of the shares).

The penalty for issuing unstamped share

warrants or stock certificates to bearer is £50.

By Section 5 of the Finance Act, 1899, the stamp duty shall extend to any instrument to bearer issued by or on behalf of any company or body of persons in the United Kingdom and having a like effect as a share warrant or stock certificate to bearer. See Section 6 of the same Act, and Section 38, Finance Act, 1920, under MARKETABLE SECURITY. (See COMPANIES, MARKETABLE SECURITY, SHARE CAPITAL, STOCK CERTIFICATE TO BEARER.)

SHILLING. This coin has varied considerably in value at different times. A coin of that name was first issued in 1504. In 1560 a pound troy of silver was coined into sixty shillings. In 1600 it was coined into sixty-two shillings, and by the Act 56 George III it was ordered to be coined into sixty-six shillings out of a pound troy of silver of the fineness of eleven ounces two pennyweights of fine silver and eighteen pennyweights of alloy in every pound weight troy. A shilling is now minted of three-quarter copper and one-quarter nickel. (See COINAGE.)

SHIP. Every British ship shall, unless exempted from registry, be registered under the Merchant Shipping Act, 1894. Ships not exceeding 15 tons burden employed solely in navigation on the rivers or coasts of the United Kingdom, are exempt from registry under the Act.

The chief officer of customs shall be the registrar of British ships at any port in the United Kingdom, or Isle of Man, approved by the Commissioners of Customs for the registry of ships.

When registered, the registrar shall grant a certificate of registry. The certificate of registry shall be used only for the lawful navigation of the ship, and shall not be subject to detention by reason of any title, lien, charge or interest by any owner, mortgagee or other person.

The property in a ship is divided into sixty-four shares.

A person is not entitled to be registered as owner of a fractional part of a share, but any number of persons not exceeding five may be registered as joint owners of a ship or of any share therein.

A corporation may be registered as owner by its corporate name.

A registered ship or a share therein (when disposed of to a person qualified to own a British ship) shall be transferred by bill of sale.

The bill of sale must be in the form as specified by the Merchant Shipping Act, 1894. The form provides for a full description of the ship, particulars of tonnage, etc., and continues—

["I" or "we"] in consideration of the sum of paid to ["me" or "us"] by the receipt whereof is hereby acknowledged, transfer shares in the ship above particularly described, and in her boats, guns, ammunition, small arms, and appurtenances, to the said .

Further ["I" or "we"] the said for ["myself and my" or "ourselves and our"] heirs covenant with the said and ["his," "her," or "their"] assigns that ["I" or "we"] have power to transfer in manner aforesaid the premises hereinbefore expressed to be transferred, and that the same are free from incumbrances [if there be any mortgage add "save as appears by the registry of the said ship"].

In witness whereof ha hereunto subscribed name and affixed seal this day of one thousand .

Executed by the above-named in the presence of .

A purchaser of a registered British vessel does not obtain a complete title until the bill of sale has been recorded at the port of registry of the ship; and neglect of this precaution may entail serious consequences.

A registrar shall indorse on the bill of sale the fact of the registration with the day and hour thereof.

In addition to the above provisions of the Merchant Shipping Act, 1894, the following Sections regulate mortgages of a ship or shares therein—

Mortgage of Ship or Share.

"31. (1) A registered ship or a share therein may be made a security for a loan or other valuable consideration, and the instrument creating the security (in this Act called a mortgage) shall be in the form marked B in the first part of the first schedule to this Act, or as near thereto as circumstances permit, and on the production of such instrument the registrar of the ship's port of registry shall record it in the register book.

"(2) Mortgages shall be recorded by the registrar in the order in time in which they are produced to him for that purpose, and the registrar

shall by memorandum under his hand notify on each mortgage that it has been recorded by him, stating the day and hour of that record.

Entry of Discharge of Mortgage.

"32. Where a registered mortgage is discharged, the registrar shall, on the production of the mortgage deed, with a receipt for the mortgage money indorsed thereon, duly signed and attested, make an entry in the register book to the effect that the mortgage has been discharged, and on that entry being made the estate (if any) which passed to the mortgagee shall vest in the person in whom (having regard to intervening acts and circumstances, if any) it would have vested if the mortgage had not been made.

Priority of Mortgages.

"33. If there are more mortgages than one registered in respect of the same ship or share, the mortgagees shall, notwithstanding any express, implied, or constructive notice, be entitled in priority, one over the other, according to the date at which each mortgage is recorded in the register book, and not according to the date of each mortgage itself.

Mortgagee not Treated as Owner.

"34. Except as far as may be necessary for making a mortgaged ship or share available as a security for the mortgage debt, the mortgagee shall not by reason of the mortgage be deemed the owner of the ship or share, nor shall the mortgagor be deemed to have ceased to be the owner thereof.

Mortgagee to have Power of Sale.

"35. Every registered mortgagee shall have power absolutely to dispose of the ship or share in respect of which he is registered, and to give effectual receipts for the purchase money; but where there are more persons than one registered as mortgagees of the same ship or share, a subsequent mortgagee shall not, except under the order of a court of competent jurisdiction, sell the ship or share without the concurrence of every prior mortgagee.

Mortgage not Affected by Bankruptcy.

"36. A registered mortgage of a ship or share shall not be affected by any act of bankruptcy committed by the mortgagor after the date of the record of the mortgage, notwithstanding that the mortgagor at the commencement of his bankruptcy had the ship or share in his possession, order or disposition, or was reputed owner thereof, and the mortgage shall be preferred to any right, claim or interest therein of the other creditors of the bankrupt or any trustee or assignee on their behalf."

Transfer of Mortgages.

The main provisions of Sections 37 and 38 are—

A registered mortgage of a ship or share may be transferred to any person, and the instrument effecting the transfer shall be in the prescribed form, or as near thereto as circumstances permit. On production of such instrument the registrar shall record it in the register and notify the fact on the instrument of transfer.

Where the interest of a mortgagee is transmitted on marriage, death, or bankruptcy, or by any lawful means, other than by a transfer under this Act, the transmission shall be authenticated by a declaration of the person to whom the interest is transmitted, containing a statement of the manner in which and the person to whom the property has been transmitted, and shall be accompanied by the like evidence as is by this Act required in case of a corresponding transmission of the ownership of a ship or share. On receipt of the declaration and the production of the evidence the registrar shall register the person entitled as mortgagee.

Mortgage to Secure Current Account.

The prescribed form of mortgage (see Section 31, above) to secure an account current is as follows—

[Insert description of ship and particulars as in Bill of Sale.]

Whereas [here state by way of recital that there is a current account detween the mortgagor (describing him) and the mortgagee (describing him); and describe the nature of the transaction so as to show how the amount of principal and interest due at any given time is to be ascertained, and the manner and time of payment.]

Now ["I" or "we"] the undersigned in consideration of the premises for ["myself" or "ourselves"] and ["my" or "our"] heirs, covenant with the said and ["his" or "their"] assigns, to pay to him or them the sums for the time being due on this security, whether by way of principal or interest, at the times and manner aforesaid. And for the purpose of better securing to the said the payment of such sums as last aforesaid ["I"

or "We"] do hereby mortgage to the said shares, of which ["I am" or "we are"] the owner in the ship above particularly described, and in her boats, guns, ammunitions, small arms, and appurtenances.

Lastly, ["I" or "we"] for ["myself" or "ourselves"] and ["my" or "our"] heirs, covenant with the said and ["his" or "their"] assigns that ["I" or "we"] ha power to mortgage in manner aforesaid the above-mentioned shares, and that the same are free from incumbrances [if any prior incumbrance add, "save as appears by the registry of the said ship"].

In witness whereof ha hereto subscribed name and affixed seal this day of one thousand nine hundred and .

Executed by the above-named }
in the presence of }

The prompt registration of a mortgage deed at the port of registry of the ship is essential to the security of the mortgagee, as a mortgage takes its priority from the date of registration, not from the date of the instrument. A record of the registration is notified on the mortgage, e.g. "Registered 4th day of April, 19..., at 10 a.m., J. Brown, Registrar of Shipping, ... Before advancing money on the mortgage of a ship, a banker should search the register (fee, 1s.) to see if there is any prior registration outstanding. Unless the mortgage is in the special form to secure a current account, he should search again before increasing the loan.

A *transfer of mortgage*, to be indorsed on the original mortgage, is as follows—

["I" or "we"] the within-mentioned in consideration of this day paid to ["me" or "us"] by hereby transfer to ["him" or "them"] the benefit of the within-written security. In witness whereof [etc., as above].

When a mortgage is paid off, the following memorandum of its discharge may be indorsed on the mortgage—

Received the sum of in discharge of the within-written security. Dated at this day of 19 .

Witness of .

A banker may insert, as the sum received in discharge of the mortgage, a nominal amount of, say, five shillings. When the discharge is registered, the mortgage is marked; "Discharge registered 10th day of May, 19..., at 3 p.m., J. Brown, Registrar of Shipping, ...

The Commissioners of Customs may, with the consent of the Board of Trade, make such alterations in the prescribed forms as they may deem requisite. (Section 65.) The forms can be obtained from the registrar at any port of registry.

No notice of any trust, express, implied, or constructive shall be entered in the register book. (Section 56.)

Any register book may be inspected on payment of a fee not exceeding one shilling. (Section 64.)

Any instruments used with regard to the registry, ownership and mortgage of a British ship are exempt from stamp duty. (Section 721.) (See STAMP DUTIES, General Exemption, No. 2.)

When a banker takes a mortgage upon a ship the policy of insurance should be left in his possession, and it is better that it should be in the bank's name. In some cases, however, it is sufficient if a letter is given by the customer stating that he holds the policy on behalf of the bank.

The insurance should cover not only the valuation of the vessel but also the statutory liability for salvage and personal injury.

When the premiums are payable quarterly, the brokers of the underwriters will require to hold the policy, and in that case a letter should be taken from the brokers stating that they hold the policy (subject to their claim for the amount of any quarterly premiums remaining unpaid), on behalf of the bank, and undertaking to advise the bank of any premiums which fall due and are not paid. The policy should not be in a mutual society if the banker has to accept liability for calls.

In a mutual insurance company "no owner whose shares in a ship are mortgaged shall be insured by the company unless the mortgagee or other approved person shall give a written guarantee to the satisfaction of the directors for payment of all demands in respect of such ship." (See MUTUAL INSURANCE.) In taking policies, the banker should inquire as to liabilities and, generally, as to the nature of the policies.

It is very essential that a steamer should be entered by the owner in a Protection Club for the risks of protection, indemnity and defence, and be insured up to £... per ton on her gross registered tonnage against liability for damage that may be done by the boat to other vessels. A banker should satisfy himself that this important matter has been attended to by the owner.

The mortgage should, as stated above, be

registered at once. If there is a bill of sale in the customer's possession, it is usual to have it lodged, as it is useful to supply the particulars required for the mortgage, but the banker's security is obtained by registration of the mortgage. There is no value in the bill of sale itself, as, upon a sale or mortgage, it is not required by the registrar.

By Section 95 of the Companies Act, 1948, "a charge on a ship or any share in a ship" given by a company must be registered with the registrar of companies. (See under REGISTRATION OF CHARGES.) It must also be registered under the Merchant Shipping Act, 1894.

Registration of the statutory mortgages of ships under the Merchant Shipping Act has the effect of fixing the priority of mortgages.

When a banker receives notice of a second registered mortgage upon the ship over which he already holds a registered mortgage to secure a current account, the account should be broken. (See NOTICE OF MORTGAGE.)

If a banker has a mortgage on less than thirty-three shares, the management of the ship is in the hands of those who hold the majority of the shares, a position which may not prove satisfactory to the banker.

The register exists only for British ships, and if a vessel should be sold to a foreign flag, the registrar will give notice to any mortgagee whose charge is entered on the register that the transfer is taking place. If a reply of satisfaction is received the entry is expunged from the register; if the reply is otherwise, the entry remains, but the transfer of the vessel still takes place. The effect is that the registrar gives a mortgagee notice, and the mortgagee must then look out for himself. It is all important that the mortgagors should be men of honour, or the security may, in the above way, suddenly disappear. (See CERTIFICATE OF MORTGAGE OF SHIP.)

A British ship is liable to be attached in a foreign port for a debt incurred in that country, and whenever that happens it is clear that the value of a banker's mortgage in this country may be seriously affected. A lien on the ship, in priority to a mortgage, may arise from a collision at sea, and from services with regard to salvage of the ship. a salvor having a maritime lien on the property salved. The master who has ordered necessaries and is personally liable to pay for them has a prior claim to a mortgagee. In the case of a foreign owned ship, a merchant who has supplied it with stores could probably enforce his claim in priority to a mortgagee. The claim of the crew for wages always ranks in front of a mortgage. See also BOTTOMRY BOND, GENERAL AVERAGE, PARTICULAR AVERAGE, RESPONDENTIA. (See VALUATION OF SHIP.)

SHIP'S HUSBAND. The person to whom the management of a ship is entrusted by or on behalf of the owner. Any person whose name is so registered at the custom house of the port of registry of the ship shall, for the purposes of the Merchant Shipping Act, 1894, be under the same obligations and subject to the same liabilities as if he were the managing owner. (Section 59 of the above-named Act.)

A ship's husband, unless authorised by the owners of the ship, has no power to borrow so as to bind the owners. (See SHIP.)

SHORT BILLS. "Short Bills" are bills of exchange which are left for collection, and not for discount.

The expression appears to have originated from the custom of entering bills left for collection in an inner column of the customer's account, or pass-book, that is in a column "short" of the one in which the amounts were entered when actually credited to the customer.

The word "short" does not refer to the currency of the bills; a bill, for example, which has twelve months to run before maturity, would, if left for collection, be called a "short bill."

Short bills remain the property of the customer, subject to any lien the banker may have upon them for any liability of the customer to him. (See BILLS FOR COLLECTION.)

Bills with a short currency are, however, often referred to as short bills, and in connection with foreign exchange the short rate refers to bills up to, say, ten days' currency. (See SHORT RATE.)

SHORT-DATED PAPER. Bills of exchange drawn for a short term, not exceeding three months after date.

SHORT EXCHANGE. In connection with the foreign exchanges the short exchange denotes bills which are payable at any time within eight or ten days. (See SHORT RATE.)

SHORT RATE. A term used in connection with the Foreign Exchanges; it means the price in one country at which a short-dated draft (up to eight or ten days' currency), drawn upon another country, can be bought. (See CHEQUE RATE, LONG RATE.)

SIGHT BILL. A bill of exchange payable

"at sight" is payable on presentation, without days of grace. The due date of a bill payable at a period "after sight" is calculated from the date of sighting. (See SIGHTING A BILL.)

SIGHT CLAUSE. (See EXCHANGE CLAUSE.)

SIGHT RATE. A term used in connection with the Foreign Exchanges; it is equivalent to Cheque Rate (*q.v.*).

SIGHTING A BILL. When a bill is drawn at a fixed period after sight, it is sent to the drawee to be "sighted"; that is, that he may accept the drawer's order for payment by signing his name across the face of the bill with the date of his acceptance. The date when the bill will be due can then be calculated from the date of the acceptance. If he omits to insert a date, the holder may put in what he considers the true date. (See DATE.) If the acceptor writes across the bill "Sighted 1st June, accepted 2nd June," the currency is calculated from 1st June, as the holder is entitled to have the bill accepted with the date when first presented for acceptance.

A bill payable at sight is equivalent to one payable on demand. (See BILL OF EXCHANGE, TIME OF PAYMENT OF BILL.)

SIGNATURE. If a banker pays a cheque on which his customer's signature is forged, he cannot charge it to the latter's account unless the drawer is estopped from denying its genuineness. (See FORGERY.) If a drawer's signature differs from his usual one and a banker is in doubt as to whether or not it is genuine, it is customary to return the cheque with the answer "signature differs."

When a cheque is returned with the answer "signature differs," the paying banker should inform the drawer that the cheque has been returned. Failure to warn the drawer might, if the signature proved to be a forgery, involve the banker in a claim for damages. In *Greenwood* v. *Martins Bank, Ltd.* (A.C. *The Times*, 30th July, 1931), Scrutton, L.J., in the course of his judgment said, "The banker, if a cheque was presented to him which he rejected as forged, would be under a duty to report that to the customer to enable him to inquire into and protect himself against the circumstances of forgery. That would involve a corresponding duty on the customer, if he became aware that forged cheques were being presented to his banker, to inform the banker in order that the banker might avoid loss in the future."

As to a bill of exchange made, accepted, or indorsed by a company, see Section 33, Companies Act, 1948, under INDORSEMENT.

Section 91 of the Bills of Exchange Act says: "Where, by this Act, any instrument or writing is required to be signed by any person, it is not necessary that he should sign it with his own hand, but it is sufficient if his signature is written thereon by some other person by or under his authority."

A banker, however, would require a proper authority from a customer before paying a cheque on which the drawer's signature was written by someone other than the drawer himself. In cases where a customer desires to give authority to another to draw cheques upon his account, it is much better that the usual method should be adopted and cheques be signed per pro. (See MANDATE, PER PRO.)

The practice of signing with an ordinary pencil is not a desirable one, and it is advisable to discourage it as much as possible. A signature may be lithographed, as in the case of dividend warrants, or it may be placed on a cheque by means of a rubber stamp by the person whose signature it is, or by anyone duly authorised by him. A rubber stamp signature, however, is full of danger, and its use should be avoided. A cheque with a stamped signature should not be paid without verification, unless a written authority is held from the customer that such signatures are to be accepted.

It is very imprudent for anyone to put his signature on a blank cheque, and a person so signing may be liable to a holder in due course, not for what he authorised to be filled in above his signature, but for what actually is filled in. See case under ALTERATIONS.

If a signature is obtained to a document, and the person signing it is under the impression that he is signing a document other than it really is, the Courts would probably free him from liability. In *Lewis* v. *Clay* (1898), 67 L.J., Q.B. 224, Lord Russell said, "A promissory note is a contract by the maker to pay the payee. Can it be said that in this case the defendant ever contracted to pay the plaintiff? His mind never went with the transaction; for all that appears, he had never heard of the plaintiff, and his mind was fraudulently directed into a different channel by the statement that he was merely witnessing a deed or other document. He had no contracting mind, and his signature, obtained by untrue statements fraudulently made, to a document of the existence of which he

had no knowledge, cannot bind him." It is stated that, in a certain foreign bank which has customers of many nationalities, it is required that, in addition to their written signatures, an imprint of their right thumb must be given, the bank keeping a record of the thumb prints. (See SIGNATURE BOOK.)

A cheque drawn in America on London was paid in March, 1927, on a specimen signature which had been wirelessed. This is probably the first occasion on which a specimen signature was transmitted by wireless. The cost was 50 dollars.

SIGNATURE BOOK. The book in which is recorded a specimen signature of each current account holder and depositor, together with his description and address. The book is carefully indexed and in some banks each signature is accorded a number in the signature book, such number being quoted on the ledger heading for ready reference.

Signature books have given way in some banks to signature cards kept in alphabetical order.

SILVER CERTIFICATES. Certificates which are issued by the Treasury of the United States as part of the paper currency. They are payable in silver, but are not legal tender, except in payment of taxes and duties. The smallest denomination is $1.

SILVER COINS. The British silver coins were: Crown, Half-crown, Florin, Shilling, Sixpence, Groat, Threepence, Twopence, Penny. The Groat, Twopence, and silver Penny are now only coined in very small quantities as Maundy money (*q.v.*).

They were a legal tender only to the amount of forty shillings. Silver coins were tokens, that is, the value of the silver in them was less than the legal value which was attached to the coins. There was no weight fixed below which silver coins ceased to be legally current.

Owing to the rise in the price of silver from its pre-war level, it was not possible to mint silver coins except at a loss, and the Coinage Act, 1920, was passed to reduce the fineness of the silver in the coins minted after that date. (See COINAGE.) The issue of the new silver coinage commenced on 13th December, 1920. The new coins were similar to the old in design, size, and weight, and were somewhat harder, but did not possess quite such a white appearance and had not such a pronounced ring. Banks were not to re-issue old coinage (i.e. pre-1920 coinage) if they had sufficient of the new coinage for current needs. The composition of the new coins was 500 parts silver, 400 parts copper, and 100 parts nickel.

A proclamation by the King was issued 3rd November, 1927, determining new designs for the silver coins.

By the Coinage Act, 1946, cupro-nickel coins were substituted for the silver coinage, consisting of three-quarters copper and one-quarter nickel. This was due to the world shortage and high price of silver, coupled with this country's liability to repay the United States of America 88,000,000 ounces of silver borrowed during the war of 1939–1945 under lease-lend arrangements.

Silver coins dated before 1816 have been demonetised, and are therefore not legal tender.

Where a bank has an accumulation of cupro-nickel coin which it cannot get rid of to its own customers or to another bank, it may take it to the Bank of England. The Bank, however, usually makes a charge of 5s. per cent for taking quantities of such coin.

Cupro-nickel is generally stored in paper bags, with the name of the bank and the branch where they are used printed thereon. Each bag is clearly also printed £5, £10, or £20, as the case may be, and the bags may be obtained with perforations so that the contents may be visible without the necessity of opening them. For sums of £100 paper bags are sometimes used, but canvas bags are more suitable. Stocks of sixpences and threepenny pieces are often kept in small envelopes or packets containing £1 or 10s. in each respectively. Paper bags containing cupro-nickel coins are usually of a different colour from the bags containing copper, to prevent mistakes in paying away. When bags are not checked at the time of receipt they should bear the name of the customer who paid them in, so that, when subsequently checked, any errors may be rectified. When a cashier has checked a bag he should initial it. (See BASE COINS, COINAGE, LEGAL TENDER.)

SIMPLE CONTRACT. (See CONTRACTS.)

SINKING FUND. A fund which is created for the purpose of redeeming debentures as they become due for payment, or of extinguishing a debt, or providing for the expiry of a lease. A certain annual sum is set aside out of profits, which, when invested, will produce at compound interest an amount equal to the sum which is required at a particular date.

The Funding Loan, 4 per cent, 1960–90, for example, is redeemable within 71 years by means of a sinking fund. The Government sets aside each half-year a sum equal

to 2½ per cent on the nominal amount of the loan originally created. After payment of interest on the loan for a half-year out of that amount, the balance of the sum so set aside is carried to a sinking fund to be applied during the succeeding half-year to the purchase of the loan for cancellation if the price is at or under par. (See FUNDING LOAN.)

When a banker wishes to provide, say, £1,000 on account of the premises of a branch, the lease of which expires in twenty years, he debits his profit and loss account with £25 each half-year and credits the amount to his premises account, so that at the end of the period the balance at the debit of premises account will have been extinguished.

SINKING FUND ASSURANCE. Where property is held upon a lease, the lessee sometimes takes out a Sinking Fund Policy by means of which a specified capital sum becomes payable at the time the lease expires. Such a policy has, in some companies, as soon as two years' premiums have been paid, a surrender value equal to the whole of the premiums paid after the first year, accumulated at 3 per cent compound interest, less 7½ per cent.

SIXPENCE. Its standard weight was 43·63636 grains troy, and its standard fineness one-half fine silver, one-half alloy. It is now made of cupro-nickel. (See COINAGE.)

Sixpences were first coined in 1551.

SLEEPING PARTNER. Sometimes called a dormant partner.

A partner in a firm who does not take any active part in the management of the business, but who is entitled to a share in the profits and is liable for a share of any losses that may be incurred.

SOCIETIES. Where an advance is granted to the committee of an association, or to a club, a society, or any similar body (e.g. literary association, cricket club, flower show), an arrangement should be made whereby someone is rendered liable to repay the money, otherwise the banker will be without any means of recovering the debt, as such bodies, not being incorporated, cannot be sued for the money. If an account is opened as "Carleton Flower Show, John Smith, Treasurer," John Smith is not personally liable for any overdraft thereon, but if the account is opened as "John Smith *a/c* Carleton Flower Show," he is personally responsible.

Such accounts are opened in various forms, but the distinction should be observed between accounts which are opened by a person in his private name, ear-marked in some way, and accounts which are in the name of an association on which the treasurer is to operate. In the latter case the banker should be supplied with a copy of the resolution appointing the treasurer and setting forth the manner in which cheques are to be signed.

When an advance is to be granted on an account opened in the name of a club, or society, or in some other impersonal form, the bank should require a document (stamped 6d.) to be signed by a reliable person agreeing to be personally responsible to the bank (in addition to any claim which the bank may have upon the society or the persons by whom the cheques may be signed) for all moneys which may from time to time be owing on the account. The agreement should include the name of the account and a reference to the manner in which cheques are to be signed thereon.

It is to be borne in mind that a guarantee is not enforceable where the debt (as in the case of an account in an impersonal name) is not enforceable at law, there being no debtor capable of being sued. Where there is no principal debtor, there can be no suretyship. Though there is no express decision on the point, a surety might, however, be held liable either as a principal or as a surety by estoppel. (See Mr. Justice Rowlatt's opinion under GUARANTEE.)

With respect to the accounts of societies registered under Building or Provident or Friendly Societies Acts, they must be opened and conducted in accordance with the rules of the societies. (See BUILDING SOCIETY.)

As to the death of a treasurer or official, see DEATH OF OFFICIAL.

SOLA BILL. (Lat. *solus*, alone, solitary.) A bill which consists simply of one document, as distinguished from foreign bills drawn in a set—that is, issued in duplicate or triplicate. The words "sola bill" are sometimes used in the body of the bill, e.g. in a bill drawn by a branch of the Bank of England on London, the words may be "seven days after date pay this Sola bill of exchange," etc. (See BILL IN A SET.)

SOLD NOTE. The contract note which is given by a stockbroker to his client, giving particulars of a sale which has been effected for him. (See CONTRACT NOTE.)

SOLICITORS' ACCOUNTS. By the Solicitors Act, 1933, the Council of the Law Society were empowered to make rules as to the keeping of accounts for clients' moneys

and as to other matters of professional conduct.

The Act and the Rules became operative on 1st January, 1935. The Rules were replaced on 1st January, 1945, by the Solicitors' Accounts Rules, 1945.

These provide *inter alia* as follows—

"1. These Rules may be cited as the Solicitors' Accounts Rules, 1945, and shall come into operation on the first day of January, 1945, whereupon the Solicitors' Accounts Rules, 1935, as amended on the 2nd day of March, 1939, the 21st day of June, 1940, and the 14th day of May, 1941, shall cease to have effect.

"2.—(1) In these Rules, unless the context otherwise requires—

"'Solicitor' shall mean a solicitor of the Supreme Court and shall include a firm of solicitors;

"'Client' shall mean any person on whose account a solicitor holds or receives client's money;

"'Client's money' shall mean money held or received by a solicitor on account of a person for whom he is acting in relation to the holding or receipt of such money either as a solicitor or, in connection with his practice as a solicitor, as agent, bailee, stakeholder or in any other capacity; provided that the expression 'client's money' shall not include—

"(*a*) money held or received on account of the trustees of a trust of which the solicitor is a solicitor-trustee, or

"(*b*) money to which the only person entitled is the solicitor himself or, in the case of a firm of solicitors, one or more of the partners in the firm;

"'Trust money' shall mean money held or received by a solicitor which is not client's money and which is subject to a trust of which the solicitor is a trustee whether or not he is solicitor-trustee of such trust;

"'Client account' shall mean a current or deposit account at a bank in the name of the solicitor in the title of which the word 'client' appears; and

"'Solicitor-trustee' shall mean a solicitor who is a sole trustee or who is co-trustee only with a partner, clerk or servant of his or with more than one of such persons.

"(2) Other expressions in these Rules shall have the meanings assigned to them by the Solicitors Acts, 1932 to 1941.

"(3) The Interpretation Act, 1889, shall apply to these Rules in the same manner as it applies to an Act of Parliament, and for the purposes of Section 38 of the said Act the Solicitors' Accounts Rules, 1935, as amended as aforesaid, shall be deemed to be an enactment repealed by these Rules.

"3. Subject to the provisions of Rule 9 hereof, every solicitor who holds or receives client's money, or money which under Rule 4 hereof he is permitted and elects to pay into a client account, shall without delay pay such money into a client account. Any solicitor may keep one client account or as many such accounts as he thinks fit.

"4. There may be paid into a client account—

"(*a*) trust money;

"(*b*) such money belonging to the solicitor as may be necessary for the purpose of opening or maintaining the account;

"(*c*) money to replace any sum which may by mistake or accident have been drawn from the account in contravention of sub-rule (2) of Rule 8 of these Rules; and

"(*d*) a cheque or draft received by the solicitor, which under Rule 5 of these Rules he is entitled to split but which he does not split.

"5. Where a solicitor holds or receives a cheque or draft which includes client's money or trust money of one or more trusts—

"(*a*) he may where practicable split such cheque or draft and, if he does so, he shall deal with each part thereof as if be had received a separate cheque or draft in respect of that part; or

"(*b*) if he does not split the cheque or draft, he shall, if any part thereof consists of client's money, and may in any other case, pay the cheque or draft into a client account.

"6. No money other than money which under the foregoing Rules a solicitor is required or permitted to pay into a client account shall be paid into a client account.

"7. There may be drawn from a client account—

"(*a*) in the case of client's money—

"(i) money properly required for a payment to or on behalf of the client;

"(ii) money properly required for or towards payment of a debt due to the solicitor from the client or in reimbursement of money expended by the solicitor on behalf of the client;

"(iii) money drawn on the client's authority; and

"(iv) money properly required for or towards payment of the solicitor's costs where a bill of costs or other written intimation of the amount of the costs incurred has been delivered to the client and the client has been notified that money held for him will be applied towards or in satisfaction of such costs;

"(*b*) in the case of trust money—

"(i) money properly required for a payment in the execution of the particular trust, and

"(ii) money to be transferred to a separate bank account kept solely for the money of the particular trust;

"(*c*) such money, not being money to which either paragraph (*a*) or paragraph (*b*) of this Rule applies, as may have been paid into the account under paragraph (*b*) or paragraph (*d*) of Rule 4 of these Rules; and

"(*d*) money which may by mistake or accident have been paid into the account in contravention of Rule 6 of these Rules;

"Provided that in any case under paragraph (*a*) or paragraph (*b*) of this Rule the money so drawn shall not exceed the total of the money held for the time being in such account on account of such client or trust.

"8.—(1) No money drawn from a client account under sub-paragraph (ii) or sub-paragraph (iv) of paragraph (*a*), or under paragraph (*c*) or paragraph (*d*) of Rule 7 of these Rules shall be drawn except by—

"(*a*) a cheque drawn in favour of the solicitor, or

"(*b*) a transfer to a bank account in the name of the solicitor not being a client account.

"(2) No money other than money permitted by Rule 7 to be drawn from a client account shall be so drawn unless the Council upon an application made to them by the solicitor specifically authorise in writing its withdrawal.

"9.—(1) Notwithstanding the provisions of these Rules, a solicitor shall not be under obligation to pay into a client account client's money held or received by him—

"(*a*) which is received by him in the form of cash and is without delay paid in cash in the ordinary course of business to the client or a third party; or

"(*b*) which is received by him in the form of a cheque or draft which is indorsed over in the ordinary course of business to the client or a third party and is not passed by the solicitor through a bank account; or

"(*c*) which he pays into a separate banking account opened or to be opened in the name of the client or of some person named by the client.

"(2) Notwithstanding the provisions of these Rules, a solicitor shall not pay into a client account client's money held or received by him—

"(*a*) which the client for his own convenience requests the solicitor to withhold from such account; or

"(*b*) which is received by him for or towards payment of a debt due to the solicitor from the client or in reimbursement of money expended by the solicitor on behalf of the client; or

"(c) which is paid to him expressly on account of costs incurred, in respect of which a bill of costs or other written intimation of the amount of the costs has been delivered, or as an agreed fee, or on account of an agreed fee, for business undertaken or to be undertaken.

"(3) Where a cheque or draft includes other client's money as well as client's money of the nature described in sub-rule (2) of this Rule such cheque or draft shall be dealt with in accordance with Rule 5 of these Rules.

"(4) Notwithstanding the provisions of these Rules the Council may upon an application made to them by a solicitor specifically authorise him in writing to withhold any client's money from a client account.

"10.—(1) Every solicitor shall at all times keep properly written up such books and accounts as may be necessary—

"(a) to show all his dealings with—

"(i) client's money held or received or paid by him, and

"(ii) any other money dealt with by him through a client account, and

"(b) to distinguish such money held, received or paid by him on account of each separate client and to distinguish such money from other money held, received or paid by him on any other account.

"(2) Every solicitor shall preserve for at least six years from the date of the last entry therein all books and accounts kept by him under sub-rule (1) of this Rule,"

(See also SOLICITORS ACT.)

SOLICITORS ACT, 1933. This Act is principally concerned with the making and enforcement of rules as to the keeping of accounts for clients' moneys.

Section 1 provides for the making of rules by the Council of the Law Society for the opening and conduct of banking accounts for clients' moneys. (See SOLICITORS' ACCOUNTS.)

Section 8 (1) provides that "no bank shall in connection with any transaction on any account of any solicitor kept with it or with any other bank (other than an account kept by a solicitor as trustee for a specified beneficiary) incur any liability or be under any obligation to make any inquiry or be deemed to have any knowledge of any right of any person to any money paid or credited to any such account which it would not incur or be under or be deemed to have in the case of an account kept by a person entitled absolutely to all the money paid or credited to it: provided that nothing in this subsection shall relieve a bank from any liability or obligation under which it would be apart from this Act."

Section 8 (2) provides that "notwithstanding anything in the preceding subsection a bank at which a solicitor keeps an account for clients' moneys shall not in respect of any liability of the solicitor to the bank, not being a liability in connection with that account, have or obtain any recourse or right, whether by way of set-off, counter-claim, charge or otherwise, against moneys standing to the credit of that account."

(See also SOLICITORS' ACCOUNTS.)

SOLICITORS' TRUST ACCOUNTS RULES. These came into force on 1st January, 1945, and are concerned with cases where a solicitor is a sole trustee, or co-trustee only with a partner, or his clerk or servant. All moneys held or received in respect of such a trust must be paid into a trust banking account either current or deposit, headed to include the word trustee or executor, and kept in the names of the trustees and solely for the purposes of the trust. A solicitor may, however, at his option pay such moneys into a "client" account. All the account holders must operate on the account in the absence of powers of delegation or unless Section 25 of the Trustee Act, 1925, applies, or unless the account relates to an executorship.

A banker is under no higher duty in regard to these accounts than he is in respect of trust accounts generally. No mention of borrowing is made in the Rules, but there is nothing in them that would preclude borrowing if such is covered by the trust instrument or by statute.

SOLICITOR'S UNDERTAKING. When a customer desires any of his securities which are held by a banker to be lent to his solicitor for inspection, written instructions should be taken from the customer. When the securities are handed to the solicitor, the

solicitor should sign an undertaking to return them in the same condition as he receives them and not to charge them or affect the banker's security in any way. Bankers have their own forms for use in these cases.

If the securities are to be given up to a solicitor, or anyone, against payment of a certain sum, the letter of authority should specifically state the amount. The undertaking will then be to pay the amount or return the securities. When there is an agreement or undertaking to pay a sum of money the document is, probably, chargeable with a stamp duty of sixpence.

SOVEREIGN. The standard of the British coinage. Its standard weight is 123·27447 grains troy and its standard fineness eleven-twelfths fine gold (113·0016 grains), one-twelfth alloy, chiefly copper (10·2728 grains). When a sovereign has been in circulation for some time it becomes reduced in weight. When the weight falls below 122·5 grains troy it is no longer a legal tender. Gold bullion weighing 40 lb. troy is coined into 1,869 sovereigns. Professor W. S. Jevons says that from experiments he estimated the average wear of a sovereign for each year of circulation at 0·043 grain. "It would follow that a sovereign cannot in general circulate more than about eighteen years without becoming illegitimately light. This length of time, then, would constitute what may be called the legal life of a sovereign." Other persons have estimated its legal life to be between fifteen or twenty years. (See LIGHT GOLD.)

By 56 Geo. III (1816) it was provided that sovereigns coined weighing $\frac{3}{31}$ parts of a guinea were to pass for 20s. They were issued in 1817. Coins of the same name but of different value were coined about 1489. (See COINAGE, POUND, PRE-VICTORIAN GOLD COINS.)

SPECIAL CROSSING. Where the name of a banker is written, or stamped, across the face of a cheque, either with or without the words "not negotiable," that addition constitutes a crossing and the cheque is crossed specially and to that banker.

The parallel lines which are necessary to constitute a general crossing are not necessary in a special crossing. (See CROSSED CHEQUE.)

SPECIAL EXECUTOR. An executor who acts in regard to settled land.

SPECIAL INDORSEMENT. A special indorsement specifies the person to whom or to whose order a bill or cheque is to be payable (Bills of Exchange Act, 1882, Section 34 (2)), as "Pay John Brown or order, J. Jones." The converse term is an "indorsement in blank," where the indorser merely signs his name. (See INDORSEMENT.)

SPECIAL MANAGER. The Companies Act, 1948, provides in Section 263 as follows—

"(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 estate or business of the company, or the interests of the creditors or contributories generally, require the appointment of a special manager of the estate or business of the company other than himself, apply to the Court, 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."

SPECIAL RESOLUTIONS. (See RESOLUTIONS.)

SPECIALTY DEBT. A debt which is acknowledged in a document under seal. (See LIMITATION ACT, 1939.)

SPECIE. (From Latin, *specio*, to look, to see.) Visible money. Gold and silver coins and bullion, as distinguished from paper money.

SPECIE POINTS. Also called "Bullion Points" and "Gold Points." The term is used in connection with the Foreign Exchanges and denotes the limits of the rate of exchange when it becomes cheaper to transmit bullion from one country to another than to buy bills. Specie points can only exist in their full sense when the two countries in question are both on the gold standard, but they can have a partial relevance whenever there is a fairly open market for gold.

If both France and England were on an effective gold standard and an English merchant desired to remit to Paris, he would either purchase a bill on Paris or make a mail or cable transfer (*q.v.*), unless he found

that this came considerably more expensive than sending coin to Paris.

If between two countries, A and B, the Mint Par of Exchange is reckoned in the number of B monetary units equivalent to one A monetary unit, then the incoming or import specie point from B to A is the Mint Par *plus* charges for packing, shipment, and insurance; whilst the outgoing or export specie point from A to B is the Mint Par *minus* similar charges. For example: Prior to September, 1931, the Mint Par between London and Paris was 124·21; the export specie point might have been 123·925, after allowing 0·285 of a franc per pound sterling as the cost of transferring gold. The import specie point would then be about 124·21 plus 0·285 = 124·495 if no allowance be made for the difference between a banker's selling and buying rates for sight drafts or cable transfers.

Specie points are liable to variation, drawing closer to the Mint Par if the cost of shipping gold decreases, moving farther from it if that cost rises. Under the gold standard cable and cheque rates cannot, however, move far from the Mint Par, for, if they did, remitters of large sums of foreign currency would make their remittances in gold.

SPECIE, TRANSMISSION OF. The risk of loss of specie in transit by train may be insured against from the time of leaving the bank office until it arrives at its destination.

Whether it is cheaper to insure or to send a clerk with the specie, depends upon the quantity sent and the price of the railway ticket. The clerk's time also requires to be taken into account.

Where specie is sent by train as a parcel the railway companies will insure it at a special rate, the company reserving to itself the right of inspecting, before effecting any insurance, all goods delivered to it for insurance, to ascertain that the consignment is in accordance with the declaration. In addition to the insurance rate, the usual rate for carriage is payable. Insured parcels, boxes, etc., must be properly sealed by the senders.

Bullion and specie, the value of which is declared to the railway company, but on which no insurance is paid, is not conveyed by the company unless a consignment note is first signed by the consignor declining to pay the increased charge for insurance or unless, in the case of regular senders, a general contract called a general risk note (stamped 6d.), is given notifying that they refuse to pay the increased charge for insurance which the railway company are entitled to demand under the Carriers Act.

Specie may be insured, under a floating policy, with underwriters.

SPECIFIC CHARGE. A term used to describe a fixed charge as opposed to a floating charge (*q.v.*). A debenture given to a bank will usually give a specific charge on named assets and a floating charge on the remainder. The specific charge may be either by way of a legal mortgage or a mere equitable charge. (See DEBENTURE.)

SPECULATION. A speculation is where a person buys a security, not with the intention of paying for it at the settling day, but of selling it again during the present, or a continued, account, in order to secure a profit, if possible. If a security is bought in order to be retained, it is called an investment. When a speculative security is bought and paid for with the intention to sell as soon as a favourable opportunity offers, it is probably more accurately described as an investment in a speculative security than a pure speculation where the purchaser has no intention, and perhaps no means, to pay for it.

SPOILED STAMPS. In making a claim for allowance of spoiled or useless stamps the following statutory declaration must be filled up and signed by the applicant—

I of do solemnly and sincerely declare that the several stamps hereinafter specified and described, that is to say,

Number of Stamps.	Value of each.	Description of Instrument.	Total Value.
		£	

are the property of and were purchased by or for use, and that paid the full amount or value thereof;

And with regard to the stamps impressed on material not written upon, and the adhesive revenue and fee stamps unattached to material, I declare that the same have been inadvertently and undesignedly spoiled or rendered unfit for use in consequence of .

And with regard to such other of the

38—(B.1535)

material on which the said stamps are impressed or to which adhesive stamps are attached as is written upon, I say that the same has been inadvertently and undesignedly spoiled, or is become useless; and that the writing thereon has not been signed by any party or otherwise completed as a legal instrument, and has not had any operation or effect whatsoever.

And with regard to the adhesive fee stamps which have been removed from material, I declare that they have been so removed by the Court or other official whose certificate is annexed.

And with regard to the postage stamps on material, I declare that the same have not passed through the post, or been used in any way whatever, but have been inadvertently and undesignedly spoiled, rendered unfit for use, or are not required, in consequence of .

And with regard to the adhesive postage stamps, I declare that the same have not passed through the post, or been used in any way whatever, but have been inadvertently and undesignedly spoiled, or rendered unfit for use in consequence of

And with regard to the instruments which have been signed I say that the same became void in consequence of

And with regard to the instruments which have been signed, the duplicates or instruments in lieu of which are now produced and exhibited duly stamped, I say that the same were spoiled in consequence of

and that the same were *bona fide* prepared and signed for the purpose of carrying into effect the transaction appearing upon the face thereof, between the parties and upon the terms and conditions therein set forth, that no legal proceeding has been commenced in which the instruments could or would have been given or offered in evidence and that the same were so signed within two years from the date hereof.

And with regard to any bill of exchange or promissory note which *from any omission or error* has been spoiled or rendered useless, although the same, being a bill of exchange may have been accepted or indorsed, or being a promissory note may have been delivered to the payee, I declare that another completed and duly stamped bill of exchange or promissory note (which I now produce) identical in every particular except in the correction of the error or omission in the spoilt bill or note has been executed in lieu thereof.

And with regard to the bills of exchange and promissory notes, other than those mentioned above, I declare that the answers to the following questions are true—

Have the bills or notes been out of the signer's hands? ——————

If so, for what purpose? ——————

Have the bills or notes been sold, or have advances or credit been obtained on them? ——————

What has become of the unstamped parts of any of the bills above mentioned which have been drawn in sets? ——————

What use has been made of any such unstamped parts? ——————

And I further say that have not been reimbursed or paid the value of the said stamps or any part thereof, by any other person or persons; and that if the value thereof shall be allowed by the Commissioners of Inland Revenue, I will not ask or receive any compensation for the same, or any part thereof, from any other person or persons, or charge the same, or any part thereof, in account or otherwise, to any other person or persons either generally or particularly, so as to be again paid or compensated for the same, or any part thereof, directly or indirectly in any manner whatsoever.

And I further say *that all the said stamps have been spoiled or become useless within the period of two years preceding the date hereof*: and that the application made by me for an allowance for the value of the said stamps is without any fraudulent intention or collusion whatsoever.

And I make this solemn declaration conscientiously believing the same to be true, and by virtue of the Statutory Declarations Act, 1835.

DECLARED at the
Stamp Office
at.....
this....day of.....19 * .....
Before me,
Distributor of stamps.

* The applicant must sign on this line.

N.B.—In cases where the declaration is

made by an agent of the principal or firm, the person authorised should be in a position to give full information as to the facts of the transaction. Any neglect of this regulation will probably lead to delay in the settlement of the claim.

The claim for allowance must be lodged at the Spoiled Stamp Office, Somerset House, and in the case of country bankers (more than ten miles from London) the claim must be made through an agent in London.

When an allowance is granted, stamps of equal amount may be obtained, or cash, less a discount, may be accepted.

Allowance of stamp duty may be made in respect of a bill of exchange which, although duly drawn, has not been accepted or made use of in any manner or delivered out of the drawer's hands for any purpose other than by way of presentment for acceptance. This only applies to bills payable other than on demand or sight. In the latter cases, allowance can only be made if a bill has been spoiled by error or omission and on production of the substituted bill identical in form.

SPOT PRICE. The "spot" price of silver is another name for "cash" price for delivery at once. The "forward" price is the quotation for delivery and payment at some future time.

SPOT RATE. The rate at which Foreign Exchange dealers (*q.v.*) can buy or sell a telegraphic transfer in the Foreign Exchange Market.

SQUATTER'S TITLE. The title which a person may obtain to land after being in undisturbed possession of it for twelve years. (See POSSESSORY TITLE.)

STAFF GUARANTEE FUND. A fund formed in a bank for the purpose of guaranteeing the bank against losses arising through fraud or dishonesty on the part of any of the persons employed by the bank. Every officer subscribes to the fund at a certain rate per cent per annum on the amount which the bank requires to be guaranteed in respect of such officer.

In some banks the officers are guaranteed through an external society or company.

STAG. The term used to describe a party who applies for a new issue of stocks or shares, with the intention of selling, after allotment, at a profit.

STALE CHEQUE. A cheque is considered by bankers to be stale six (by some bankers twelve) months after the date of the cheque, and such a cheque is usually returned marked "out of date." When the stale date is confirmed by the drawer the cheque is paid. The practice of not paying cheques which are "out of date" is not sanctioned by law and is simply a custom of bankers. By law the drawer of a cheque is not, under ordinary circumstances, released from liability on the cheque until six years from the date of it, and a banker would, apparently, be justified in paying a cheque at any time during that period; but, in practice, as stated, a cheque which is "out of date" is paid only when confirmed by the drawer.

By Section 45, Bills of Exchange Act, 1882, presentment of a bill payable on demand "must be made within a reasonable time after its issue in order to render the drawer liable, and within a reasonable time after its indorsement in order to render the indorser liable." Cheques, so far as the drawer is concerned, are not included in this Section. The drawer remains liable, as above stated, for six years from the date of the cheque, unless he suffers actual loss, as where a banker fails, through his cheque not having been presented for payment within a reasonable time when he is discharged to the extent of such loss. (See Section 74, under PRESENTMENT FOR PAYMENT.)

By Section 36 (3), Bills of Exchange Act, 1882, a bill payable on demand is deemed to be overdue when it appears on the face of it to have been in circulation for an unreasonable length of time. Such an instrument is not negotiable. (See Section 36 (2).) Unreasonable length of time is a question of fact. (See under OVERDUE CHEQUE.)

STAMP ACT, 1853, SECTION 19. "Any draft or order drawn upon a banker for a sum of money payable to order on demand which shall, when presented for payment, purport to be indorsed by the person to whom the same shall be drawn payable, shall be a sufficient authority to such banker to pay the amount of such draft or order to the bearer thereof, and it shall not be incumbent on such banker to prove that such indorsement, or any subsequent indorsement, was made by or under the authority or direction of the person to whom the said draft or order was, or is, made payable, either by the drawer or any indorser thereof."

This enactment, prior to the passing of the Bills of Exchange Act, 1882, gave protection from forged indorsements to bankers paying cheques and drafts on themselves. After the Bills of Exchange Act came into

force, bankers usually looked to Sections 60 and 80 thereof to protect them against forged indorsements on open and crossed cheques respectively. The use of Section 19 of the Stamp Act was thereafter confined to protection against forged indorsements on banker's drafts, but since the passing of the Bills of Exchange Act, 1882 (Amendment) Act, 1932, which permitted the crossing of banker's drafts and brought them within the ambit of the crossed cheque sections of the Bills of Exchange Act, 1882, the section is virtually only useful in its protection against forged indorsements on open banker's drafts. But nevertheless, until 1937, the Courts had on occasion proceeded on the lines that the passing of the Bills of Exchange Act, 1882, did not deprive a banker of the alternative protection of the Stamp Act, 1853, Section 19, which would be useful where the bank had not acted in the ordinary course of business. In *Worshipful Company of Carpenters, etc.* v. *British Mutual Banking Co. Ltd.* (1937) it was held, however, in the Court of Appeal that Section 19 of the Stamp Act was impliedly repealed by the Bills of Exchange Act, 1882, Section 60. Lord Justice Greer said: "I agree . . . that the Bills of Exchange Act, 1882, Section 60, must be treated as inconsistent, so far as cheques are concerned, with the provisions of the Stamp Act, 1853, Section 19, and the sole duty of the Court, after the passing of the Bills of Exchange Act is to apply Section 60 of that Act."

STAMP DUTIES. By the Stamp Act, 1891—

REGULATIONS APPLICABLE TO INSTRUMENTS GENERALLY.
CHARGE OF DUTY UPON INSTRUMENTS.

Charge of Duties in Schedule.

"1. From and after the commencement of this Act the stamp duties to be charged for the use of Her Majesty upon the several instruments specified in the first Schedule to this Act shall be the several duties in the said schedule specified, which duties shall be in substitution for the duties theretofore chargeable under the enactments repealed by this Act, and shall be subject to the exemptions contained in this Act and in any other Act for the time being in force.

All Duties to be Paid According to Regulations of Act.

"2. All stamp duties for the time being chargeable by law upon any instruments are to be paid and denoted according to the regulations in this Act contained, and except where express provision is made to the contrary are to be denoted by impressed stamps only.

How Instruments are to be Written and Stamped.

"3. (1) Every instrument written upon stamped material is to be written in such manner, and every instrument partly or wholly written before being stamped is to be so stamped, that the stamp may appear on the face of the instrument, and cannot be used for or applied to any other instrument written upon the same piece of material.

"(2) If more than one instrument be written upon the same piece of material, every one of the instruments is to be separately and distinctly stamped with the duty with which it is chargeable.

Instruments to be Separately Charged with Duty in Certain Cases.

"4. Except where express provision to the contrary is made by this or any other Act—

"(*a*) An instrument containing or relating to several distinct matters is to be separately and distinctly charged, as if it were a separate instrument, with duty in respect of each of the matters;

"(*b*) An instrument made for any consideration in respect whereof it is chargeable with *ad valorem* duty, and also for any further or other valuable consideration or considerations, is to be separately and distinctly charged, as if it were a separate instrument, with duty in respect of each of the considerations.

Facts and Circumstances Affecting Duty to be Set Forth in Instruments.

"5. All the facts and circumstances affecting the liability of any instrument to duty, or the amount of the duty with which any instrument is chargeable, are to be fully and truly set forth in the instrument; and every person who, with intent to defraud Her Majesty,

"(*a*) executes any instrument in which all the said facts and circumstances are not fully and truly set forth; or

"(*b*) being employed or concerned in or about the preparation of any instrument, neglects or omits fully and

truly to set forth therein all the said facts and circumstances;

shall incur a fine of ten pounds."

PRODUCTION OF INSTRUMENTS IN EVIDENCE.

Terms upon which Instruments not Duly Stamped may be Received in Evidence.

"14. (1) Upon the production of an instrument chargeable with any duty as evidence in any court of civil judicature in any part of the United Kingdom, or before any arbitrator or referee, notice shall be taken by the judge, arbitrator, or referee of any omission or insufficiency of the stamp thereon, and if the instrument is one which may legally be stamped after the execution thereof, it may, on payment to the officer of the Court whose duty it is to read the instrument, or to the arbitrator or referee, of the amount of the unpaid duty, and the penalty payable on stamping the same, and of a further sum of one pound, be received in evidence, saving all just exceptions on other grounds.

"(4) Save as aforesaid, an instrument executed in any part of the United Kingdom, or relating, wheresoever executed, to any property situate, or to any matter or thing done or to be done, in any part of the United Kingdom, shall not, except in criminal proceedings, be given in evidence, or be available for any purpose whatever, unless it is duly stamped in accordance with the law in force at the time when it was first executed.

STAMPING OF INSTRUMENTS AFTER EXECUTION.

Penalty Upon Stamping Instruments After Execution.

"15. (1) Save where other express provision is in this Act made, any unstamped or insufficiently stamped instrument may be stamped after the execution thereof, on payment of the unpaid duty and a penalty of ten pounds, and also by way of further penalty, where the unpaid duty exceeds ten pounds, of interest on such duty, at the rate of five pounds per centum per annum, from the day upon which the instrument was first executed up to the time when the amount of interest is equal to the unpaid duty.

"(2) In the case of such instruments hereinafter mentioned as are chargeable with *ad valorem* duty, the following provisions shall have effect—

"(*a*) The instrument, unless it is written upon duly stamped material, shall be duly stamped with the proper *ad valorem* duty before the expiration of thirty days after it is first executed, or after it has been first received in the United Kingdom in case it is first executed at any place out of the United Kingdom, unless the opinion of the Commissioners with respect to the amount of duty with which the instrument is chargeable, has, before such expiration, been required under the provisions of this Act:

"(*b*) If the opinion of the Commissioners with respect to any such instrument has been required, the instrument shall be stamped in accordance with the assessment of the Commissioners within fourteen days after notice of the assessment:

"(*c*) If any such instrument executed after the sixteenth day of May, one thousand eight hundred and eighty-eight has not been or is not duly stamped in conformity with the foregoing provisions of this subsection, the person in that behalf hereinafter specified shall incur a fine of ten pounds, and in addition to the penalty payable on stamping the instrument there shall be paid a further penalty equivalent to the stamp duty thereon, unless a reasonable excuse for the delay in stamping, or the omission to stamp, or the insufficiency of stamp, be afforded to the satisfaction of the Commissioners, or of the Court, judge, arbitrator, or referee before whom it is produced:

"(*d*) The instruments and persons

to which the provisions of this subsection are to apply are as shown in table. (See below.)

"(3) Provided that save where other express provision is made by this Act in relation to any particular instrument:

"(*a*) Any unstamped or insufficiently stamped instrument which has been first executed at any place out of the United Kingdom, may be stamped, at any time within thirty days after it has been first received in the United Kingdom, on payment of the unpaid duty only: and

"(*b*) The Commissioners may, if they think fit, at any time within three months after the first execution of any instrument, mitigate or remit any penalty payable on stamping.

"(4) The payment of any penalty payable on stamping is to be denoted on the instrument by a particular stamp."

By the Finance Act, 1895—

"15. So much of Section 15 of the Stamp Act, 1891, as limits the time within which the Commissioners of Inland Revenue may mitigate or remit any penalty payable on stamping shall be repealed."

ENTRIES UPON ROLLS, BOOKS, ETC.

Penalty for Enrolling, etc., Instrument Not Duly Stamped.

"17. If any person whose office it is to enrol, register, or enter in or upon any rolls, books, or records any instrument chargeable with duty, enrols, registers, or enters any such instrument not being duly stamped, he shall incur a fine of ten pounds.

Conditions and Agreements as to Stamp Duty Void.

"117. Every condition of sale framed with the view of precluding objection or requisition upon the ground of absence or insufficiency of stamp upon any instrument executed after the sixteenth day of May one thousand eight hundred and eighty-eight, and every contract, arrangement, or undertaking for assuming the liability on account of absence or insufficiency of stamp upon any such instrument or indemnifying against such liability, absence, or insufficiency, shall be void."

GENERAL EXEMPTIONS FROM ALL STAMP DUTIES.

(1) Transfers of shares in the Government or Parliamentary stocks or funds.

(2) Instruments for the sale, transfer, or other disposition either absolutely or by way of mortgage, or otherwise, of any ship or vessel, or any part, interest, share, or property of or in any ship or vessel.

(3) Instruments of apprenticeship, bonds, contracts, and agreements entered into in the United Kingdom for or relating to the service in any of Her Majesty's colonies or possessions abroad of any person as an artificer, clerk, domestic servant, handicraftsman, mechanic, gardener, servant in husbandry, or labourer.

(4) Testaments, testamentary instruments, and dispositions *mortis causa* in Scotland.

(5) Instruments made by, to, or with the Commissioners of Works for any of the purposes of the Act 15 & 16 Vict. c. 28.

(6) Deeds or instruments made or executed for the purpose of the Post Office, by, to, or with Her Majesty, or any officer of the Post Office (44 & 45 Vict. c. 20, Section 5).

Title of Instrument as described in the First Schedule to this Act	Person liable to Penalty
Bond, covenant, or instrument of any kind whatsoever	The obligee, covenantee, or other person taking the security.
Conveyance on sale	The vendee or transferee.
Lease or tack	The lessee.
Mortgage, bond, debenture, covenant, and warrant of attorney to confess and enter up judgment.	The mortgagee or obligee; in the case of a transfer or reconveyance, the transferee, assignee, or disponee, or the person redeeming the security.
Settlement	The settlor.
Added by Section 74 (3) *of the Finance* (1909-10) *Act*, 1910:—	
Conveyances or transfers operating as voluntary dispositions *inter vivos*.	Grantor or transferer

(See Section 148, Bankruptcy Act, 1914, under BANKRUPTCY.)

The following regulations were issued by the Board of Inland Revenue, Somerset House, December, 1902—

REGULATIONS under which PLAIN PAPER, BANKERS' CHEQUES, and other PRINTED FORMS are impressed with the 1d. [or 2d.] Inland Revenue Stamp.

1. The paper must be of such quality, thickness and colour, as to be suitable for receiving the impression of the dies.

2. The paper must be flat and uncreased, and should neither be gummed nor perforated before it is sent to be stamped.

3. Each sheet of paper or single form for which a separate stamp is required must not be narrower than five inches nor less than one and a half inches in depth. A form five inches in length can only be stamped close to the edge.

4. *When more forms (cheques or receipts) than one are printed on a sheet, the stamping will be expedited if the sheets be presented entire, i.e. before they are cut up.* In cases where the forms are in two rows on a sheet the forms should be printed back to back. If bound or stitched the books must not be unwieldy in size nor heavier in weight than ten pounds. Stamps cannot be placed near the counterfoils of forms.

5. The top sheet of the parcel or book should be marked to indicate the position where it is desired that the stamp should be placed, which, however, must be within one inch and a half of the edge of the sheet. The stamp will be placed as near to the position indicated as the circumstances of the case will permit.

6. When a special position of the stamp is required in the case of printed forms it is desirable that before the work is printed a proof should be submitted to the Inspector of Stamping.

7. All fly-leaves and inserted orders for new books must be completely folded back.

8. The Commissioners of Inland Revenue will not accept any responsibility for injury to material in the process of stamping, nor for loss of stamps or material, which may arise in transmission to or from this office.

9. When the paper is brought to Somerset House for stamping, a person must attend at the department of the Accountant and Comptroller-General (Room No. 26) to fill up the necessary "warrant," and to pay the duty.

10. Penny [or twopence] Inland Revenue stamps are also impressed under similar conditions at the Inland Revenue offices at Edinburgh and Manchester.

The following documents must be stamped before execution—

Bills of Exchange (Inland). (See BILL OF EXCHANGE.)
Contract Notes.
Policies of Insurance.
Promissory Notes (Inland).
Receipts.
Share Warrants.

Documents, other than the above, requiring an *ad valorem* stamp, e.g. conveyances, mortgages, memoranda of deposit, transfers, must be stamped within thirty days after execution, or if executed abroad within thirty days from the date on which they arrive in the United Kingdom.

Agreements under hand, duty sixpence, e.g. guarantee, memorandum of deposit of marketable securities, qualifying agreement may be stamped within fourteen days after execution.

Documents which have not been stamped within the time allowed, may be subsequently stamped on payment of a penalty of £10. (See Section 15, above.)

The *ad valorem* duties upon bills of exchange or promissory notes drawn or made out of the United Kingdom are referred to under BILL OF EXCHANGE.

The various duties are given under the different headings.

Where a document of charge requires further stamp duty to be impressed, a certificate in the following form must be furnished to the Stamp Office.—

I hereby certify that the amount at any time owing by to

(*a*) If the amount has not yet been exceeded cancel these words.

(*b*) If the advance has already been exceeded cancel these words.

(*a*) (did not exceed £ until the day of 19), (*b*) (or has not at any time exceeded the sum of £) and I request that further stamp duty may be impressed on the instrument of day of 19 to cover a total advance of £

* Signature.
Address.
19 . Date.

* To be signed by the mortgagee or by the manager of the bank making the advance.

(See ADHESIVE STAMPS, ADJUDICATION STAMPS, AD VALOREM, APPROPRIATED STAMPS, BILL OF EXCHANGE, CANCELLATION OF STAMPS, COMPOSITION, CONVEYANCE, DENOTING STAMPS, IMPRESSED STAMPS, RECEIPT, SPOILED STAMPS.)

STANDARD OF VALUE. In the principal countries of the world, gold (represented in the United Kingdom by the sovereign) is the sole standard or measure of value.

STANDING CREDITS. A customer may, as a rule, arrange to have his cheques cashed at another bank or at some other branch. The request should be in writing and be signed by the customer. The letter advising the bank or branch to honour his cheques should be signed by the manager and state precisely what cheques are to be paid, to what extent and for how long the credit is to continue, and a specimen signature should accompany the advice. Such cheques should not be crossed.

A common form of advice is to honour cheques drawn by John Brown to the extent of £10 in any one day. An advice to honour cheques to the extent of £60 in any one week is not a good form, if the customer giving the order intends the money to be drawn at the rate of so much per day, as it is clear that the full amount may be drawn on one day and still comply with the letter of advice.

When a bank receives from another bank or branch a request to pay certain cheques, the greatest care should be taken to ascertain that the letter of advice is genuine. If there is any doubt, a confirmation could be asked for by wire.

Credits opened between different banks are, as a rule, arranged through the head offices of the respective banks.

Particulars of all credits opened should be recorded at the heading of the customer's account. The amount of such credits should of course be justified by the nature of the account. The banker having opened a credit cannot refuse to pay a cheque cashed thereunder, in the event of there being no funds to meet it in the customer's account.

The customer is sometimes given a special form of cheque book, the cheques being drawn upon the banker who is to pay the cheques and an indication is given upon the cheques of the name of the bank where the drawer's account is kept.

The mere fact that a banker pays a cheque drawn upon another bank, under a standing order, does not release him from liability if he pays one bearing a forged indorsement. He should make certain that the party presenting a cheque is the person entitled to receive payment. If payment is made to the wrong person the banker who cashes the cheque is liable for any loss. It is reasonable, however, to expect that a customer wishing his cheques so paid should state in writing that the banker shall not incur any greater liability than if the cheques were paid by the bank on which they are drawn. With regard to the liability of a bank which pays, under advice, a cheque drawn upon another bank, or upon another branch of the same bank, see under PAYMENT OF CHEQUE.

A register should be kept of all standing credits given by a branch and also of all received by a branch, and entries made therein of each cheque drawn under the credits, so that the banker may see at a glance that the instructions respecting the various credits are not being exceeded. If a credit, without any time limit, has not been operated upon for a considerable time, it is desirable to inquire if it is still to continue, or if it should be cancelled.

When a customer gives an order to stop payment of a cheque, notice should be given to each branch or bank which has authority to cash his cheques.

STANDING ORDERS. (See BANKER'S ORDER.)

STANNARIES. (Latin, *stannum*, tin.) A term which is applied to the tin mines in Cornwall or Devon and to the peculiar customs and laws in connection with the mines. A company of more than twenty persons formed for the purpose of gain must be registered under the Companies Act, 1948, unless formed under 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." (See PARTNERSHIPS.)

The above-mentioned Act makes certain special provisions in connection with the winding up of companies in the stannaries.

Attachment of Debt due to Contributory on Winding Up in Stannaries Court.

"Section 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."

The Act also provides for various modifications with respect to preferential payments of salaries and wages. (See COMPANIES: WINDING UP.)

STATE. Contraction of "statement." The name given in some offices to a weekly statement or return sent to head office exhibiting all the transactions at a branch for the week.

STATEMENT IN LIEU OF PROSPECTUS. A statement filed with the Registrar of Companies where a public company having a share capital does not issue a prospectus, or having issued a prospectus, has not proceeded to allot any of the shares offered to the public.

In such cases no allotment of shares or debentures can be made until a statement in lieu of prospectus is filed at least three days before the first allotment, signed by every named director or proposed director. (See Section 48, Companies Act, 1948.)

STATUS OPINION. (See BANKER'S OPINION.)

STATUTE-BARRED. A debt is said to be statute-barred when it cannot be recovered in a court of law, because the time within which the creditor had the right to sue the debtor has expired. (See LIMITATION ACT, 1939.)

STATUTE LAW. The written law of the land, as distinguished from the unwritten or "common law" (*q.v.*).

"The written laws of the Kingdom are statutes, acts or edicts, made by the sovereign, by and with the advice and consent of the lords spiritual and temporal, and commons, in Parliament assembled." (Blackstone.)

Originally, bills of exchange were regulated by the customs of merchants. When these customs were recognised by the courts they became that part of the common law of England known as *lex mercatoria*; and when these recognised customs were incorporated in the Bills of Exchange Act, 1882, they became, by Act of Parliament, statute law. Statute law may merely declare what is already the common law of the land, or it may create entirely new law.

STATUTES OF LIMITATION. (See LIMITATION ACT, 1939.

STATUTORY BOOKS. The books which are required to be kept by companies registered under the Companies Act, 1948, viz.—

By Section 110: Register of Members.

By Section 124: Annual List of Members and Summary. (See REGISTER OF MEMBERS OF COMPANY.)

By Section 145: Minute Book. (See MINUTES.)

By Section 200: Register of Directors, or Managers. (See DIRECTORS.)

By Section 104: Register of Mortgages. (See REGISTRATION OF CHARGES.)

STATUTORY DECLARATION. A declaration in writing (without oath), made in accordance with the Statutory Declarations Act, 1835, by which a person solemnly declares that he verifies some circumstance or fact. For example, if it should be necessary for Smith to have proof that Brown has been (as he maintains) in possession of a certain property for a specified period, Smith may be satisfied to accept a statutory declaration from, say, Jones, formally stating that he is able, from his own knowledge, to vouch for the accuracy of Brown's assertion.

All declarations must be made before a justice of the peace, notary public, or commissioner to administer oaths in the Supreme Court of Judicature.

The form of statutory declaration to be given when verifying a memorandum of satisfaction of a mortgage or charge is given under MEMORANDUM OF SATISFACTION.

Stamp duty on statutory declarations was abolished by the Finance Act, 1949.

STATUTORY MEETING OF COMPANY. Every *public* company limited by shares, and every company limited by guarantee which has 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, which shall be called the statutory meeting. (See Section 130, Companies Act, 1948, under MEETINGS AND PROCEEDINGS.)

STATUTORY MORTGAGE. By the Law of Property Act, 1925, a mortgage of freehold or leasehold land may be made by a deed expressed to be made by way of legal mortgage in the following form, with such variations and additions, if any, as circumstances may require, and the provisions of Section 117 of the Act shall apply thereto—

STATUTORY CHARGE BY WAY OF LEGAL MORTGAGE.

This legal charge made by way of statutory mortgage the day of 19 , between A of [etc.] of the one part and M of [etc.] of the other part Witnesseth that in consideration of the sum of £ now paid to A by M of which sum A hereby acknowledges the receipt A as mortgagor and as beneficial owner hereby charges by way of legal mortgage all that [etc.] with the payment to M on the day of 19 , of the principal sum of £ as the mortgage money with interest thereon at the rate of per centum per annum.

In witness, etc.

M will be in the same position as if the charge had been effected by a demise of freeholds or a sub-demise of leaseholds. (See MORTGAGE.)

By Section 117—

(2) There shall be deemed to be included, and there shall by virtue of this Act be implied, in the mortgage deed—

First, a covenant with the mortgagee by the person expressed therein to charge as mortgagor to the effect following (namely):

That the mortgagor will, on the stated day, pay to the mortgagee the stated mortgage money, with interest thereon in the meantime, at the stated rate, and will thereafter, if and as long as the mortgage money, or any part thereof, remains unpaid, pay to the mortgagee interest thereon, or on the unpaid part thereof, at the stated rate, by equal half-yearly payments, the first thereof to be made at the end of six months from the day stated for payment of the mortgage money:

Secondly, a proviso to the effect following (namely):

That if the mortgagor, on the stated day, pays to the mortgagee the stated mortgage money, with interest thereon in the meantime, at the stated rate, the mortgagee at any time thereafter, at the request and cost of the mortgagor, shall discharge the mortgaged property to the mortgagor, or as he shall direct.

The following is the form given in the Act of a statutory transfer of mortgage, a covenantor joining—

This Transfer of Mortgage made by way of statutory transfer the day of 19 , between A of [etc.] of the first part B of [etc.] of the second part and C of [etc.] of the third part supplemental to a legal charge made by way of statutory mortgage dated the day of 19 , and made between [etc] Witnesseth that in consideration of the sum of £ now paid to A by C being the mortgage money due in respect of the said legal charge no interest being now due and payable thereon of which sum A hereby acknowledges the receipt A as mortgagee with the concurrence of B who joins herein as covenantor hereby conveys and transfers to C the benefit of the said legal charge.

In witness, etc.

By Section 118, the deed shall have effect as follows—

"2. (*a*) There shall become vested in the person to whom the benefit of the mortgage is expressed to be transferred, who, with his personal representatives, and assigns, is in this Section designated the transferee, the right to demand, sue for, recover, and give receipts for the mortgage money, or the unpaid part thereof, and the interest then due, if any, and thenceforth to become due thereon, and the benefit of all securities for the same, and the benefit of and the right to sue on all covenants with the mortgagee and the right to exercise all powers of the mortgagee:

"(*b*) All the estate and interest, subject to redemption, of the mortgagee in the mortgaged land shall rest in the transferee, subject to redemption."

In the above form, the same Section (s.s. 3) provides that there shall also be deemed to be included a covenant with the transferee by the person expressed to join therein as covenantor to the effect following—

"That the covenantor will, on the next of the days by the mortgage deed fixed for payment of interest, pay to the transferee the stated mortgage money, or so much thereof as then remains unpaid, with interest thereon, or on the unpaid part thereof, in the meantime, at the rate stated in the mortgage deed; and will thereafter, as long as the mortgage money, or any part thereof, remains unpaid, pay to the transferee interest on that sum, or the unpaid part thereof, at the same rate, on the successive days by the mortgage deed fixed for payment

of interest." (See TRANSFER OF MORTGAGE.)

A statutory mortgage may be surrendered or discharged by a receipt in the following form—

I, A B of [etc.] hereby acknowledge that I have this day of 19 , received the sum of £ representing the mortgage money secured by the within written statutory mortgage together with all interest and costs the payment having been made by C D of [etc.]

As witness, etc

Prior to 1926 mortgaged land had to be reconveyed to the mortgagor, as is shown by the following old form of statutory reconveyance—

This Indenture made by way of statutory reconveyance of mortgage the day of 1884, between C of [etc.] of the one part and B of [etc.] of the other part supplemental to an indenture made by way of statutory transfer of mortgage dated the day of 1883, and made between [etc.] Witnesseth that in consideration of all principal money and interest due under that indenture having been paid of which principal and interest C hereby acknowledges the receipt C as mortgagee hereby conveys to B all the lands and hereditaments now vested in C under the said indenture To hold to and to the use of B in fee simple discharged from all principal money and interest secured by and from all claims and demands under the said indenture.

In Witness, etc.

(See MORTGAGE.)

STATUTORY OWNER. In the Settled Land Act, 1925, statutory owner means the trustees of the settlement or other persons who, during a minority, or at any other time when there is no tenant for life, have the powers of a tenant for life under this Act, but does not include the trustees where the trustees have power, under an order of the Court or otherwise, to convey the settled land in the name of the tenant for life. (See SETTLED LAND.)

STATUTORY RECEIPT. Where a mortgage term has been satisfied, a receipt usually indorsed on the mortgage deed now takes the place of the reconveyance, discharge, or release given before the Law of Property Act, 1925, came into force. A mortgagor, however, may still demand a reassignment, surrender, release, or transfer in place of a receipt (Law of Property Act, 1925, Section 115 (4)).

Such a receipt operates—

(*a*) Where the mortgage takes effect by demise or sub-demise, as a surrender of the term so as to determine the term or merge the same in the reversion immediately expectant thereon.

(*b*) Where the mortgage does not take effect by demise or sub-demise as a reconveyance thereof, to the extent of the interest which is the subject-matter of the mortgage, to the person who immediately before the execution of the receipt was entitled to the equity of redemption;

and in either case as a discharge of the mortgaged property from all principal money and interest secured by, and from all claims under, the mortgage, but without prejudice to any term or other interest which is paramount to the estate or interest of the mortgagee or other person in whom the mortgaged property was vested. (Law of Property Act, 1925, Section 115 (1)).

The third schedule to the Act gives a form of receipt as follows—

I, A B of hereby acknowledge that I have this day of 19 received the sum of £ representing the (aggregate) (balance remaining owing) in respect of the principal money secured by the within (above) written (annexed) mortgage, together with all interest and costs, the payment having been made by C D of .

As witness, etc.

The statutory receipt should conform with the following requisites—

(*a*) It must be expressed to be for all money secured by the mortgage deed, or for the balance remaining owing.

(*b*) It must state the name of the person who pays the money.

(*c*) It must be executed by the person legally entitled to give a receipt, i.e. the person in whom a mortgage lease is vested or the owner of the charge by way of legal mortgage.

(*d*) It must be indorsed on, written at the foot of, or annexed to the mortgage deed in question.

(*e*) If the money is paid by a person not immediately entitled to the equity of redemption, i.e. by anyone other than the original mortgagor or his transferor, the receipt will operate as a transfer by deed of the benefit of the mortgage to him, unless it is expressly provided otherwise, or the mortgage is discharged out of money in the hands of a personal representative or trustee.

Where part only of the mortgage debt is being satisfied, the statutory receipt is inapplicable and a form of surrender or release should be used in such a case. (See RECONVEYANCE.) Where two or more mortgage deeds have been taken in respect of the one property, the statutory receipt need be written on one deed only, but it must refer to all the deeds or to the aggregate amount of the mortgage debt.

A statutory receipt is usually given under seal, although there is nothing in the Act that makes it necessary. Stamp duty is payable on a receipt as on a reconveyance, at the rate of sixpence per cent on the highest sum lent on the mortgage deed. Receipts given by Friendly, Building, or Industrial or Provident Societies are exempt from stamp duty as hitherto.

The Law of Property Act, 1925, Section 116, states that, if a mortgagor is not insistent on the statutory form of discharge, an alternative method of discharge is available, by an unstamped receipt indorsed under hand on the mortgage deed, provided that it does not contain any words purporting to release the property from the mortgage.

An equitable mortgage can be discharged by a simple receipt under hand. (See EQUITABLE MORTGAGE.)

The foregoing provisions of Section 115 do not apply to the discharge of a charge registered under the Land Registration Act, 1925. (See LAND REGISTRATION.)

STATUTORY REPORT. The directors of a public company limited by shares shall, at least fourteen days before the date on which the statutory meeting (*q.v.*) is held, forward a report, called the statutory report, to every member of the company. For the requirements of the Act regarding this report, see under heading MEETINGS.

STATUTORY TRUSTS. For the purposes of the Law of Property Act, 1925, land held upon "statutory trusts" shall be held upon trust to sell the same and to stand possessed of the net proceeds, after payment of costs, etc., and upon such trusts as may be requisite for giving effect to the rights of the persons interested in the land. (Section 35.) (See INTESTACY, JOINT TENANTS.)

STERLING. When gold and silver are of the standard fineness they are called sterling metals. Various explanations are given as to the original meaning of the word sterling. A coin called an "Easterling" was introduced into the coinage in the reign of King Richard I and as that coin was considered superior to other coins in circulation at that time it is probable that the word sterling took its rise from the Easterling. Another suggestion (given in Hutchison's *Practice of Banking*) is that the word was derived "from Easterling, a name given to persons who periodically examined the mint and regulated the coinage, possibly at Easter, so that the term means true money according to the last examination, as 100 pennies, or pounds, Easterling, or sterling." (See COINAGE.)

STERLING AREA. When Great Britain abandoned the Gold Standard in 1931, certain other countries, both within and without the Empire, followed suit and ceased to tie their currency to gold, linking it instead to the pound sterling. At the time of the outbreak of war in September, 1939, all the countries of the Empire (except Canada), Norway, Sweden, Denmark, Finland, Greece, Portugal, and Bolivia had adopted this system.

Until the passing of the Exchange Control Act, 1947, what was known as the Sterling Area comprised all countries in the British Empire—except Canada and Newfoundland—and the mandated territories of Egypt, Irak, Anglo-Egyptian Sudan, and Iceland. France, Belgium, Holland and their respective colonies, Sweden, and Denmark, were not in the Sterling Area, but were the subjects of monetary agreements, thus facilitating trade within the Sterling Area. The dollar area covered the United States, Canada, and Newfoundland.

Under the Exchange Control Act, 1947, the term "Scheduled Territories" is substituted for "Sterling Area."

STERLING BONDS. Bonds of a foreign country which are payable in British currency.

STET. (Latin, let it stand.) When entries in a book have been ruled out in mistake, instead of erasing the line, it is sometimes a convenient way of correcting the error to write the word "stet" in a different coloured ink, thus indicating that the entries stand as they were before the line was passed through them.

STIFFENING INDORSEMENT. (See BACKING A BILL.)

STOCK. The capital of a company is the money contributed by the members and forms what is called the stock. A member may hold so much stock or so many shares in the company. Stock may be held and transferred in any amounts (without distinguishing numbers), whereas shares are

for fixed amounts and all numbered, e.g. a person may hold £150 of stock if the capital is dealt with in that way; but if the capital is divided into shares of, say, £5 each, fully paid, then the person with the same holding would have thirty shares of £5 each. Stock, by its nature, is fully paid up, but upon shares there is often a liability. In Government stocks, any odd amount (e.g. £33 6s. 8d.) may be transferred; but in the case of an ordinary limited company, transfers of stock are usually, for convenience, restricted to certain round sums.

There may be varieties of stock as guaranteed, preference, ordinary, deferred and other kinds, which entitle the holders to different rights in the matter of dividends and in a division upon a winding up of the company.

A company cannot make an original issue of stock. It can only be done by a conversion of fully-paid shares into stock. As to the power of a company limited by shares to convert shares into stock, see Section 61, Companies Act, 1948, under SHARE CAPITAL.

In companies where Table A applies the regulations are—

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; but the directors may from time to time fix the minimum amount of stock transferable, and restrict or forbid the transfer of fractions of that minimum, but the minimum shall not exceed the nominal amount of the shares from which the stock arose.

"42. The holders of stock shall, according to the amount of the stock held by them, have the same rights, privileges, and advantages as regards dividends, voting at meetings of the company, and other matters as if they held the shares from which the stock arose, but no such privilege or advantage (except participation in the dividends and profits of the company, 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 'stock-holder.'" (See COMPANIES, SHARE CAPITAL.)

STOCKBROKER. One who purchases or sells stocks and shares for clients. His remuneration is the commission he receives from his clients on the purchases and sales he effects on their behalf; the rate varies in different classes of stocks.

The minimum scale of commission laid down by the Council of the London Stock Exchange is given below. The lowest commission is usually £1, but this minimum is reduced—

(*a*) On transactions of less than £100 in value, to 10s.;

(*b*) on transactions of less than £20 in value, to 5s.

SECTION A. (1)

British Government Securities British Electricity Guaranteed Stocks British Gas Guaranteed Stocks British Transport Guaranteed Stocks Indian Government Stocks London County Consolidated Stocks	½ per cent on any amount of Stock up to £10,000.
*Dominion and Colonial Government Securities *County, Corporation and Provincial Securities (British, Dominion or Colonial) Public Boards (Great Britain and Northern Ireland) Inscribed and Registered Stocks International Bank for Reconstruction and Development Stock	¼ per cent on any balance in excess of £10,000 Stock

* See also A. (2) below.

SECTION A. (2)

(i) Dominion and Colonial Government, Provincial, County and Corporation Securities Bonds to Bearer either expressed in a currency other than Sterling or carrying an option for payment at a fixed rate in a currency other than Sterling, where the price is over 100 (ii) County, Corporation and Provincial Securities (British, Dominion or Colonial) Annuities (dealt in per unit of Annuity) (iii) Bank of Ireland Stock	½ per cent on Money.

SECTION B.

Bonds to Bearer other than those included in Section A.

Price	1 or under		At discretion.	
Price Over	1 and not exceeding	5	¼	per cent on Stock.
,,	5 ,, ,,	10	⅜	,, ,,
,,	10 ,, ,,	20	½	,, ,,
,,	20 ,, ,,	50	⅝	,, ,,
,,	50 ,, ,,	75	¾	,, ,,
,,	75 ,, ,,	100	⅞	,, ,,

With an increase of ⅛ per cent on Stock for every 25 points in price, or portion thereof.

SECTION C.

Registered Stocks (quoted per cent), Registered Debentures and Bonds	½ per cent on Money.

SECTION D.

Shares or Units of Stock, Registered or Bearer (other than Shares included in Section E).

£ s. d.	£ s. d.	s. d.
Price – 1 –	or under	At discretion.
Over – 1 –	to – 1 6	– ¼ per Share or Unit.
,, – 1 6	,, – 2 6	– ½ ,, ,,
,, – 2 6	,, – 3 6	– ¾ ,, ,,
,, – 3 6	,, – 5 –	– 1 ,, ,,
,, – 5 –	,, – 10 –	– 1½ ,, ,,
,, – 10 –	,, – 15 –	– 2½ ,, ,,
,, – 15 –	,, 1 – –	– 3 ,, ,,
,, 1 – –	,, 1 10 –	– 3½ ,, ,,
,, 1 10 –	,, 2 – –	– 4½ ,, ,,
,, 2 – –	,, 2 10 –	– 6 ,, ,,
,, 2 10 –	,, 3 – –	– 7½ ,, ,,
,, 3 – –	,, 4 – –	– 9 ,, ,,
,, 4 – –	,, 5 – –	1 – ,, ,,
,, 5 – –	,, 7 10 –	1 3 ,, ,,
,, 7 10 –	,,10 – –	1 6 ,, ,,
,, 10 – –	. . .	¼ per cent on Money.

SECTION E.

Shares of companies incorporated in the United States of America or Canada (whether dealt in in London on a Dollar or Sterling basis), with the exception of Shares which are transferable by Deed of Transfer.

The Dollar prices set out in the scale below relate to transactions done for settlement in Sterling (including any premium paid or received).

For the purpose of applying the scale to transactions effected in overseas markets where payment is made and received in Dollars, the American or Canadian Dollar price is to be converted into the Sterling equivalent at the current rate of exchange.

Price										s. d.	
Price 25 cents (1/–) or under										At discretion.	
Over 25	cents	(1/–)	,,	37½	cents	(1/6)	.	.	–	¼	per Share.
,, 37½	,,	(1/6)	,,	62½	,,	(2/6)	.	.	–	½	,,
62½	,,	(2/6)	,,	87½	,,	(3/6)	.	.	–	¾	,,
,, 87½	,,	(3/6)	,,	$1¼		(5/–)	.		1		,,
,, $1¼		(5/–)	,,	$2½		(10/–)	.	–	1½		,,
,, $2½		(10/–)	,,	$3¾		(15/–)	.	–	2½		,,
,, $3¾		(15/–)	,,	$5		(£1)	.	–	3		,,
,, $5		(£1)	,,	$7½		(£1/10)	.	–	3½		,,
,, $7½		(£1/10)	,,	$10		(£2)	.	–	4½		,,
,, $10		(£2)	,,	$12½		(£2/10)	.	–	6		,,
,, $12½		(£2/10)	,,	$15		(£3)	.	–	7½		,,
,, $15		(£3)	,,	$20		(£4)	.	–	9		,,
,, $20		(£4)	,,	$25		(£5)	.	1	–		,,
,, $25		(£5)	,,	$37½		(£7/10)	.	1	3		,,
,, $37½		(£7/10)	,,	$50		(£10)	.	1	6		,,
,, $50		(£10)	,,	$75		(£15)	.	1	9		,,
,, $75		(£15)	,,	$100		(£20)	.	2	–		,,
,, $100		(£20)	,,	$150		(£30)	.	2	3		,,
,, $150		(£30)	,,	$200		(£40)	.	2	6		,,

With 6d. rise for every $50, or portion thereof, in price.

(*Note.* The above scale assumes a fictitious rate of $5 = £1.)

SECTION F.

Securities of New Issues passing by delivery in scrip form or by letters of Renunciation—

(*a*) On Sales of all such securities whether partly paid or fully paid . . . At discretion.

(*b*) On Purchases—

(i) When Nil paid . . . At discretion.

(ii) Partly paid Shares.
At the rate laid down in Section D, calculated on the amount paid up per share adding or deducting the current premium or discount as the case may be.

(iii) Fully paid Shares or Units of Stock.
At the rate laid down in Section D.

(iv) Partly paid Stock (quoted per cent), Debentures and Bonds.
At the rate laid down in Section B, calculated on the amount paid up adding or deducting the current premium or discount as the case may be.

(v) Fully-paid Stock (quoted per cent), Debentures and Bonds.
At the rate laid down in Section B.

(vi) Securities included in Section A.
At discretion until Security is fully paid and then at the rate laid down in Section A.

SECTION G.

Indian Railway Annuities . .	¼ per cent on Money.
Options for more than one Account . .	As on bargains.
Options for one Account or less . . .	At discretion.
Powers of Attorney for Inscribed Stock . .	
Probate and other Valuations . . .	
Securities Made-up or Made-down . . .	
Short-dated Securities (having Five Years or less to run)*	
Transfers of Stocks and Shares . . .	

* NOTE. Not applicable in the case of securities in default.

By the rules of the Stock Exchange, when a stock is sold and the proceeds are by the following account invested in another stock, brokers are allowed to charge full commission on the one transaction and half-commission on the other. When the same security is bought and sold for the same principal within the same account brokers may charge only one commission.

With regard to a stockbroker's account, in *Thompson* v. *Clydesdale Bank, Ltd.*, [1893] A.C. 282, Lord Herschell said: "It seems to me that, if because an account is opened with bankers by a stockbroker they are bound to inquire into the source from which he receives any money which he pays in, it would be wholly impossible that business could be carried on, and I know of no principle or authority which establishes such a proposition." (See CONTRACT NOTE (BROKER'S), STOCK EXCHANGE, STOCK JOBBER.)

STOCKBROKERS' LOANS. When a stockbroker lends money to a client who desires to purchase stocks and shares, the securities are usually deposited with the broker as cover for the advance, and the broker is often authorised to transfer them to a banker as security when it is necessary for the broker to obtain an advance from him. In such cases the broker's interest in the securities is limited to the money he has lent to his client, and if they are given to a banker as security for the general indebtedness of the broker various questions arise. The results of several important cases which have come before the Courts show (1) that if a banker has definite knowledge when he takes certain securities from a broker that the broker is dealing with them beyond his authority—that is, that they are being given to the banker to cover a greater sum than the amount lent by the broker to the client—the client will be entitled to redeem them from the banker, even if transferred into the banker's name, on paying the amount due by him to the broker; (2) that if the banker has no reason to suppose that the securities are not the

broker's own property, the client will not be entitled to redeem them (if they have been registered in the banker's name) except by payment of the debt due from the broker to the banker. In *Bentinck* v. *London Joint Stock Bank*, [1893] 2 Ch. 120, a firm of stockbrokers deposited with their bankers, as security for a loan, various stocks, shares, and bonds belonging to a client, the securities having been pledged with the brokers by the client. The stocks and shares were registered in the names of the bank's nominees. The client asserted that he had authorised the brokers to repledge his securities only for an amount not exceeding what he owed to the brokers, and that on paying such amount to the bank he was entitled to redeem his securities. In the course of his judgment, Mr. Justice North said that when money is borrowed by a client from a stockbroker on "contango" or "continuation," whether the money is obtained from the dealer, or from other stockbrokers, or from bankers, the result is the same; the arrangement is one by which the broker becomes, as between himself and his client, the owner of the shares in question, although he is under a contract to provide an equal amount of similar shares at a future date. It was held that there was nothing to lead the bank to suppose that the stocks and shares which were transferred to their nominees were not the broker's own property, and that the bank must therefore be treated as *bona fide* holders for value without notice. It was also held that, as to the stocks and shares of which the client had himself executed transfers, he was estopped from denying that the brokers had authority to pledge them to the bank for their full value.

When negotiable securities are pledged by a broker, there is no obligation upon a banker to inquire whether they are the property of the broker or not. If there is anything to arouse suspicion the banker would be put upon inquiry, but, apart from that, any "person taking a negotiable instrument in good faith and for value obtains a title valid against all the world."

When a banker has notice that a broker has power to pledge a client's securities only to a limited extent, the banker's advance to the broker upon any such securities should not, of course, exceed that limit. The banker should receive a letter or memorandum from the broker's client agreeing to the broker charging the securities to the extent of the client's indebtedness to the broker. (See BLANK TRANSFER, NEGOTIABLE INSTRUMENTS.)

STOCKBROKING TRANSACTIONS. When a banker is requested by a customer to instruct his brokers to purchase or sell certain stocks or shares, the request should be made in writing so that no mistake or misunderstanding may arise. In the case of a sale, it should be signed by the person in whose name the stocks or shares are registered; if registered in several names, the signature of each person should be appended. The order should contain a precise description of the security, a note of the amount of stock or number of shares to be sold, and the price at which the sale is to be effected. The order is usually to sell at "not less than £ per cent," or per share; or it may be to sell "at best price."

In the case of a purchase, it should be particularly noted whether the customer wishes to invest a sum of, say, £500 in a given stock or to purchase £500 of the stock. Equal care is necessary in transmitting the order to the brokers, otherwise an unlooked for result may be produced. The order may be to purchase at "the lowest price," or "at best," or at "not more than £ per cent," or per share. The "lowest price" is not a satisfactory form of order, as the price might fall after the broker has fulfilled the order, and complications might arise with the customer. When the cost is known, a cheque is obtained from the customer for the amount, unless the order includes an authority to charge the amount to the account of the person signing the order. The latter plan is the better one.

A purchase or sale may be effected either "for cash" or "for the account" and the customer should instruct as desired.

Where a broker shares his commission with the bank, a note to that effect should appear upon the face of the contract note. By the rules of the Stock Exchange, an agent's share of the commission must not be divided with or allowed to his principal. (See CONTRACT NOTE (BROKER'S), PREVENTION OF CORRUPTION ACT.)

An order to buy or sell is not subject to stamp duty; if an order to buy includes an authority to charge the purchase price to the customer's account it does not attract stamp duty, as the document does not contain any reference to a definite sum of money. An order to "invest" a certain sum in securities, and to charge the account therewith, would require a 2d. stamp. Office vouchers used to debit the customer's account with the cost of the purchase are also not

liable to stamp duty. (Board of Inland Revenue.)

A prudent banker is careful not to advise customers as to the sale or purchase of stocks and shares; when advice is required, he obtains it from the bank's broker, and transmits it to the customer as "the broker's advice."

If the purchaser dies before the settlement, his account may be debited with the purchase price. (See STOCKBROKER.)

STOCK CERTIFICATE. (See CERTIFICATE.)

STOCK CERTIFICATE TO BEARER. A certificate which entitles the bearer to the stock mentioned therein and which is transferable by simple delivery of the certificate.

As to stamp duty, see under SHARE WARRANT.

By Section 109 of the Stamp Act, 1891—

"(1) Where the holder of a stock certificate to bearer has been entered on the register of the local authority as the owner of the share of stock described in the certificate, the certificate shall be forthwith cancelled so as to be incapable of being re-issued to any person.

"(2) Every person by whom a stock certificate to bearer is issued without being duly stamped shall incur a fine of fifty pounds."

By Section 5 of the Finance Act, 1899, the duty on stock certificates to bearer shall extend to any instrument to bearer issued by or on behalf of any company or body of persons in the United Kingdom and having a like effect as a stock certificate to bearer. (See Section 6 of the same Act, and Section 38, Finance Act, 1920.)

Stock certificates to bearer for various Government and corporation stocks transferable at the Bank of England can be obtained from the Bank. The stock holder must either attend at the Bank in person to transfer inscribed stock, or grant a power of attorney to some person, or firm, for this purpose.

STOCK CHEQUE (or **STOCK DRAFT**). The term applied to a demand draft drawn by a seller of securities in one country on a buyer in another country, or on the buyer's banker. In practice, the parties are usually stockbrokers. The purchase of securities is usually carried on between two centres by telegraphic transfers and the seller remits the securities direct to the buyer. It may be, however, that the seller wishes to ensure receiving the purchase price prior to remitting the securities, in which case the buyer may instruct his bank to honour a draft drawn on it by the seller for an agreed amount provided the securities are attached to the draft and are in order. The seller will be able to sell the stock cheque to his own bank and then receive cash against securities. (See REVERSE STOCK CHEQUE.)

STOCK EXCHANGE. The place appointed for the purchase and sale of stocks and shares. The London Stock Exchange is situate in Capel Court between Threadneedle Street and Throgmorton Street. As other stock exchanges are managed on somewhat similar lines, it will suffice to give a few particulars of this one.

The business of the "House," as the Stock Exchange is termed, is split up into the different "markets," or classes of securities dealt in, as those of Consols, colonial stocks, corporations, foreign governments, home railways, foreign railways, banks, industrials, mines and others.

The dealers engaged are of two kinds, stockbrokers and stock jobbers, who must all be members of the Exchange. The former deal with the outside public, taking their clients' instructions as to buying and selling, and themselves doing the actual business with the jobbers, selling to them the securities their clients sell and obtaining from them the stocks and shares their clients buy. Thus the jobbers are merchants and act as middlemen between those brokers who have stock for sale and those who wish to purchase; and the method in which they make their profit is different from that of the brokers, for the latter are paid by the commission, at so much per cent or per share, which they receive from their clients, whilst the jobbers take the "turn" between the price they give for a stock and the rate at which they sell it again.

On receiving instructions from his client a broker buys so much stock from a jobber or sells so much to him, as the case may be, at the price which he offers, subject to the client's "limit"; he then sends his client a contract note which, amongst other particulars, quotes the settling day when the price is due to be paid. A large proportion of the Stock Exchange business is speculative, however, and the price is not paid; instead, if the transaction has been a purchase and the stock has risen in price before the end of the account, the client may request his broker to sell again and the broker will then merely

send him a cheque for the profit on the "deal." (See BULL AND BEAR.)

In most stocks there are two settlements per month, one near the middle and the other near the end; transactions in Government stocks are for cash. A transaction that is to be completed on the settling day next following is known as one "for the account"; there is also much business done "for money" or "for cash," that is, for immediate payment. (See SETTLING DAYS.)

If, on contango or making-up day, the client did not wish to complete a purchase, the broker would by arrangement carry over the bargain until the following settlement again, charging a contango for the service. Contangos were abolished at the outbreak of war in 1939, when fortnightly settlements ceased and all transactions were for cash. Fortnightly settlements were not resumed until January, 1947, however, and the contango system was not restored until May, 1949, and then only in a modified form. (See CONTANGO.) In order to find the money to pay for stocks bought in this way for clients who did not pay on settling day, the brokers frequently borrowed from their bankers, lodging as security the stocks in question. The margin in the value of the security beyond the amount of the advance varied with the class of stock; the period for which bankers arranged such "stock-brokers' loans" was till the next "account" —i.e. the next Stock Exchange settling day, at which time the amount of the loan, margin, rate of interest, etc., would be rearranged.

By a rule made by the London Stock Exchange Committee in 1926 it is provided that if a bearer bond is stopped, because it has been lost or stolen or for some other reason, the buyer may submit the case to the Committee, who in their discretion may direct the seller to take back the stopped bond from the buyer and give him in exchange a "clean" or valid bond. This rule is for the protection of the buyer, whether a member of the Stock Exchange or the investing public, against the delays and expenses incidental to the possession of a "disabled" bond, and for the maintenance of the freedom of the market in foreign bonds.

For the sake of brevity some stocks quoted on the Stock Exchange are occasionally referred to by brokers and in the press by abbreviated names.

The principal foreign stock exchanges are New York, Paris, Berlin, Vienna, Frankfort-on-Maine, Brussels, and Amsterdam. In many places stock exchange business is conducted at the Bourses. (See BOURSE.)

(See ACCOUNT DAY, BACKWARDATION, BEAR AND BULL, CARRYING OVER, CONTANGO, CONTRACT NOTE, DIFFERENCES, MAKING-UP PRICE, OFFICIAL LIST, OPTIONS, QUOTATION ON LONDON STOCK EXCHANGE, SETTLING DAYS, SPECIAL SETTLEMENT, STOCKBROKER, STOCK JOBBER.)

STOCK EXCHANGE DAILY OFFICIAL LIST. As from the 14th April, 1947, the *Stock Exchange Daily List of Officially Quoted Securities* and the *Daily Supplementary List of Securities not Officially Quoted* have been merged in a new *Stock Exchange Daily Official List*, published under the authority of the Council of the Stock Exchange.

All securities previously in the Supplementary List have now been classified as "Officially Quoted," and in future an official quotation will normally be given when permission to deal is granted, though in some cases it may not be practical to give a quotation until certain statutory formalities have been completed. Until then such securities will appear in the List in italics.

With the issue of the new List, a number of securities have been transferred to or from the Monthly Supplement, the issue of which is being continued for the sake of paper economy. The Monthly Supplement contains those securities for which markings are infrequently recorded, and securities appearing therein are now all "officially quoted" (subject to the above-mentioned exception).

STOCK EXCHANGE HOLIDAYS. The London Stock Exchange is closed on the following days: 1st January, Easter Monday, 1st May, Whit Monday, first Monday in August, 1st November, 26th December, unless specially ordered otherwise by the Committee for General Purposes. When 1st January, 1st May, 1st November, or 26th December falls on a Sunday the House is closed on the day following. For many years the House has been closed on Saturdays.

STOCK EXCHANGE SETTLEMENT. The adjustment of differences between brokers and clients, when payment is made to clients for stocks sold on their behalf and payment received from clients for stocks bought. (See SETTLING DAYS.)

STOCK JOBBER. A dealer in stocks and shares who conducts his business with the stockbrokers, acting as intermediary between those brokers who have securities for sale and those who wish to purchase. By

39—(B.1535)

the rules of the London Stock Exchange, a jobber may not deal with the public direct. The jobber's profit (called the jobber's turn) is the difference between his buying and selling prices. He is also called a dealer. (See STOCK EXCHANGE.)

STOCK RECEIPT. The receipt which is given by the seller or his attorney, to the purchaser, when inscribed stocks are transferred. It is of no value as a security. A holder's title is the entry in the stock books at the registrar's office where the stocks are domiciled.

In order that inscribed stock may be taken as a security for an advance, it must be registered in the name of the bank or in the names of the bank's nominees.

STOCK TRUST CERTIFICATE. The name of a certificate issued by certain American railroad companies. It certifies that, on surrender, "John Brown" will be entitled, out of certificates delivered to undersigned voting trustees, to receive a certificate for shares of dollars, etc.

On the back is a form of transfer and an appointment of an attorney to transfer all interest in the stock trust certificate on the books of the voting trustees. (See AMERICAN SHARE CERTIFICATES.)

STOCK WARRANT. A stock warrant to bearer entitles the bearer of the warrant to the stock therein specified.

(See SHARE WARRANT, STOCK.)

A stock warrant is a negotiable instrument.

STOLEN BANK NOTES. Where bank notes have been stolen, a holder for value, without notice that they have been stolen, is entitled to payment and the person who lost them cannot recover from him. But where it is proved that bank notes have been stolen, the burden of proof that they were taken in good faith and for value rests upon the holder.

A banker cannot refuse to pay his own notes, but where he has information that certain notes have been stolen he would naturally make full inquiry before paying such notes.

The numbers, when known, of notes which have been stolen are usually notified to bankers and money changers, but it has been held that the mere fact that a person has possession of a list of the numbers of stolen notes will not, if he has, in good faith, given value for one of them, prevent him from recovering upon any such note. (*Raphael* v. *Bank of England* (1855), 25 L.J.C.P. 33.) It is quite clear, therefore, that the notice which is sometimes found in newspapers that "payment has been stopped" of stolen or lost bank notes is legally of no value whatever.

STOLEN BILL. A bill of exchange can be the subject of larceny like any other valuable document of title, but it is unnecessary to inquire into anything beyond the civil position as to liability in connection with the matter.

By Section 20 of the Bills of Exchange Act, 1882, very full authority is given to fill up an inchoate instrument (*q.v.*) and turn it into a complete bill. But this does not permit of the filling up and the conversion being effected by any other than the duly authorised person. If, therefore, an inchoate instrument is stolen before completion, no action can be brought upon it, for it would have to be signed by some person or other, and the signature would be either forged or unauthorised, having been made by some person other than the one entitled to complete the bill. The forged or unauthorised signature is wholly inoperative. (Section 24.) This is well established by the case of *Baxendale* v. *Bennett* (1878), 3 Q.B.D. 525. B put his blank acceptance in a desk. It was stolen, filled up as a bill by C with his own name as drawer, and negotiated. It was held that even a holder in due course could not recover from B, as he had never delivered the inchoate instrument for the purpose of being converted into a bill by C. Whatever remedies there may be for those persons who have dealt in and with the instrument, they are independent of the document, which never became a bill at all. But if a person accepts a bill in blank and authorises the person to whom he issues it to fill it up, and it is filled up by him for any amount that the stamp will cover, the acceptor is liable even if filled up for a greater amount than he intended. "Where a man has signed a blank acceptance, and has issued it, and has authorised the holder to fill it up, he is liable on the bill, whatever the amount may be, though he has given secret instructions to the holder as to the amount for which he shall fill it up; he has enabled his agent to deceive an innocent party, and he is liable." (Brett, L.J., in *Baxendale* v. *Bennett*.)

Again, if a bill complete in form is stolen, the liability of the parties will depend upon the particular circumstances. Thus, C, the holder of a bill, specially indorsed it to D, and forwarded it in a letter to D. In the course of transmission the bill was stolen and D's indorsement forged. The bill was afterwards negotiated. Since the indorsement of

D was necessary for negotiation, and this had not been obtained, the signature was, under Section 24, wholly inoperative, and C still retained the property in the bill. No liability rested on any person who was a party to the bill prior to the time of D's forged indorsement. (*Arnold* v. *Cheque Bank* (1876), 1 C.P.D. 578, at p. 584). If, on the contrary, the bill is indorsed in blank and stolen, a holder in good faith and without notice that his title to the bill is defective is entitled to demand payment of the same. And if a bill indorsed in blank is stolen whilst in the course of negotiation for any person who was the holder of it, the payment at maturity by the acceptor, provided he acts in good faith, is a good discharge of the bill, even though the payment is made to the actual thief. (See *Smith* v. *Sheppard* (1776) a case cited by Chitty in his *Bills of Exchange*, 10th ed., p. 180, *n.*)

When a bill is in the hands of a holder in due course a valid delivery of the bill by all parties prior to him so as to make them liable to him is conclusively presumed (Section 21), but no title can be obtained through or under a forged or unauthorised signature. (See Section 24 under FORGERY.)

With regard to bills of exchange in general, that is, those bills which do not fall within the definition of a cheque (see Section 60), a banker is in no better position than a private individual, unless special arrangements are made by the banker when a bill is made payable at his bank.

STOLEN CHEQUE. For most purposes a cheque is legally regarded as a bill of exchange; but the law is not quite the same with regard to the two instruments, at least as far as the larceny of them is concerned. The civil liability when a bill is stolen has been referred to in the last article, but it would appear that when a cheque is stolen, the position of the banker is peculiar. The crossing of cheques, and the marking of them as "not negotiable," have safeguarded the public to a remarkable extent by making it more difficult for a thief to obtain cash for the cheques, though the mere crossing of a cheque does not affect its negotiability if it is regular in every respect. If a cheque is stolen whilst in course of transmission, a holder in due course is entitled to the amount of it, and may sue the drawer or any other party to the cheque upon it if payment has been stopped. But, of course, if the cheque is specially indorsed and the indorsee's signature has not been added, an unauthorised or a forged signature would be appended, and through this signature (by Section 24) no title could be made to it. The property would remain in the last indorser.

In the case of a cheque which has been crossed with the addition of the words "not negotiable" any person taking such a cheque shall not have, and shall not be capable of giving, a better title to the cheque than that which the person had from whom he took it. (Section 81.)

If the banker on whom an open cheque is drawn pays it in good faith and in the ordinary course of business, then (by Section 60) the banker is entitled to charge his customer, and there is no responsibility resting upon him if the indorsement has been forged and the cheque stolen. If the cheque is payable to bearer, or if, after having been made payable to order it bears the true signature of the indorsee, it gets into circulation, it becomes the property of any holder who has taken it in good faith and has had no reason to doubt that it was regular in every respect.

In the case of a crossed cheque which has been stolen, the banker on whom it is drawn is protected if he pays it in accordance with Section 80, and a collecting banker by virtue of Section 82. (See CROSSED CHEQUE.)

At a first view it seems that the position taken up by a banker as to paying a cheque drawn upon him without his knowing that it had been delivered or issued is not quite in accordance with the law. But as far as practice is concerned, it seems that the position is correctly stated in Morse's *Law of Banking* (4th ed., p. 687): "If a cheque is stolen, or if after being lost by the drawer it is found by some other person, it is not, in the hands of the thief or of the finder 'issued' as against the drawer. But so far as concerns the bank, it would be considered as issued, and the bank would be protected in paying it, provided it did so *bona fide*, and with no knowledge of the precedent circumstances." (See Section 21, the Bills of Exchange Act, 1882.)

STOLEN POST OFFICE MONEY ORDER. Postal orders and money orders are not negotiable instruments, and the Post Office has the right, if any irregularity should be found, of returning them, at any subsequent date, to the banker who presented them and received payment.

STOP ORDER. STOP PAYMENT. STOPPED CHEQUE. (See PAYMENT STOPPED.)

STOPPAGE IN TRANSITU. (See SALE OF GOODS ACT.)

STOPPED BOND. (See under STOCK EXCHANGE.)

STOPPED NOTE. (See BANK OF ENGLAND NOTES.)

STOPPING AN ACCOUNT. (See BROKEN ACCOUNT, CLOSING AN ACCOUNT.)

STRAIGHT BILL OF LADING. (See BILL OF LADING.)

STREET PRICES. After the London Stock Exchange is closed for the day, the dealers in American or other securities may continue their business in the street, whence the terms "street market" and "street prices."

SUB-BRANCH. A successful branch very often works one or more sub-branches, or agencies. They may be open daily and have a resident clerk in charge, or be worked by a clerk from the parent office. In many cases, sub-branches are open only on one, two, or three days a week. When open daily it may, so far as book-keeping is concerned, be worked as though it were a separate branch, but when it is not open daily all the transactions are passed through the parent branch. Cheque books are often supplied for the use of sub-branch customers, when the office is open daily, bearing the name of the sub-branch. Such cheques are strictly payable at the sub-office on which they are drawn, in the same way that cheques drawn on the parent office are payable there and not at the sub-branch. As a rule, a branch and its sub-branch are in close communication so as to avoid refusing payment of a cheque at the branch when the drawer of the cheque has paid in to credit at the sub-office. A banker, however, is not liable if he should dishonour a cheque at the one office when sufficient money is paid in to meet it at the other office on the same day, as he cannot be expected to know of the credit till advice is received in due course. But if a clerk at the sub-branch pays a cheque drawn on the parent branch and the cheque is dishonoured, the bank may not be able to recover the money from the person to whom it was paid. In cases of doubt, the cheque on the parent office should be received merely for collection, and, in any case, there is always the possibility that payment of it may have been stopped.

SUB-CHARGE. The owner of a charge on registered land may raise money on it by means of a sub-charge. This may be registered at the Land Registry in exchange for a certificate of sub-charge. An equitable sub-charge can be obtained by the lodgment of the charge certificate and giving notice of deposit of the charge certificate to the Land Registry. (See LAND REGISTRATION.)

SUB-LEASE. Where a sub-lease is deposited as security, it should be accompanied by an attested copy of the original lease. (See LEASEHOLD.)

SUB-MORTGAGE. A mortgage of a mortgage.

A party who is a mortgagee may raise money on the security of his mortgage by means of a sub-mortgage. A legal sub-mortgage takes the form of the grant by the mortgagee to the sub-mortgagee of a term a few days shorter than his own term. A sub-mortgage existing before 1926 was converted by the Law of Property Act into a lease less by one day than the term vested in the mortgagee.

An equitable sub-mortgage can be taken by the deposit of the mortgage deeds with a memorandum.

When taking a sub-mortgage, notice should be given to the mortgagor and his acknowledgment obtained in order that any repayments by him shall be made to the sub-mortgagee. He should confirm the amount owing.

Searches should be made against the sub-mortgagor; they are not necessary against the mortgagor.

(See MORTGAGE.)

SUBPOENA. (Latin, *sub*, under; *poena*, punishment.) A writ by which the attendance of a person in Court is commanded, under a penalty.

SUBPOENA DUCES TECUM. A subpoena which orders the attendance in Court of a person with production of documents.

SUBROGATION. Where a person borrows without authority or in excess of his authority and applies the borrowed money in payment of existing debts, the lender is entitled to all the rights and remedies of the creditors so paid, i.e. he is subrogated to them. If a banker lends money to a company which has no power to borrow, he cannot recover from the company, but the banker has the right of subrogation; that is, he is entitled to occupy the position of such creditors of the company as were paid out of the money he advanced to the company and to recover from the company the debts of the creditors so paid, but he is not subrogated to any securities of the creditors. The debts so paid include those actually payable at the time of the advance or which became payable afterwards. (*Wenlock* v. *River Dee Co.* (1887), 19 Q.B.D. 155.)

The same remarks apply with reference to money lent to a company in excess of its borrowing powers.

Where a guarantor repays the full debt due to the banker on the account for which he is surety, he is subrogated to the rights of the banker—that is, he is thereby entitled, in the absence of agreement to the contrary, to the banker's right to sue the debtor, or to claim upon his estate, and to the benefit of any securities which the banker held. (See GUARANTEE.) The same remarks apply where securities have been given by a third party and he pays off the whole debt. Before giving up any such security the banker should obtain the consent of the customer and of any other parties interested in the account.

SUBSCRIBED CAPITAL. That part of the nominal or authorised capital which has been issued by the directors of a company and subscribed or taken up by the shareholders. It may be fully paid up, or only partly paid, in which latter case the remainder is termed the "uncalled" capital. (See CAPITAL, UNCALLED CAPITAL.)

SUBSIDIARY COMPANY. The Companies Act, 1948, defines a subsidiary company as follows—

"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."

SUBSTITUTED SECURITY. (See MORTGAGE.)

SUCCESSION DUTY. A duty which was payable by the person who succeeded to real or leasehold property in the United Kingdom, upon the death of another person. The duty was also payable upon legacies which were charged upon the proceeds of a sale of real estate, or on so much of the proceeds of a sale of real estate as might be required to discharge legacies where the personal estate had proved insufficient, and upon personal property included in a settlement.

Succession duty was abolished by the Finance Act, 1949. (See ESTATE DUTY.)

SUMMARY ADMINISTRATION. In the case of a small bankruptcy, where the debtor's estate is not likely to exceed £300, the estate may be administered in a simpler manner than in an ordinary bankruptcy. Section 129 of the Bankruptcy Act, 1914, provides—

"Where a petition is presented by or against a debtor, if the Court is satisfied by affidavit or otherwise, or the official receiver reports to the Court, that the property of the debtor is not likely to exceed in value three hundred pounds, the Court may make an order that the debtor's estate be administered in a summary manner, and thereupon the provisions of this Act shall be subject to the following modifications—

"(1) If the debtor is adjudged bankrupt the official receiver shall be the trustee in the bankruptcy:

"(2) There shall be no committee of inspection, but the official receiver may do with the permission of the Board of Trade all things which may be done by the trustee with the permission of the committee of inspection:

"(3) Such other modifications may be made in the provisions of this Act as may be prescribed by general rules with the view of saving expense and simplifying procedure; but nothing in this Section shall permit the modification of the provisions of this Act relating to the examination or discharge of the debtor.

"Provided that the creditors may at any time, by special resolution, resolve that some person other than the official receiver be appointed trustee in the bankruptcy, and thereupon the bankruptcy shall proceed as if an order for summary administration had not been made." (See BANKRUPTCY.)

SUNDRY CREDITORS ACCOUNT or **SUNDRY PERSONS ACCOUNT.** An account through which may be passed isolated transactions with parties who are not actual customers, or have not a current account. It may also be used for various other items which do not belong to any particular account.

SUPERANNUATION ANNUITY. As to stamp duty see BOND.

SUPPLEMENTAL DEED. By the Law of Property Act, 1925, any instrument expressed to be supplemental to a previous instrument shall, as far as may be, be read and have effect as if the supplemental instrument contained a full recital of the previous instrument. (Section 58.)

SUPRA PROTEST. Where a bill of exchange has been protested for dishonour by non-acceptance, any person may, with the consent of the holder, accept the bill supra protest for the honour of any party liable thereon. (See ACCEPTANCE FOR HONOUR.)

Also, where a bill has been protested for non-payment, any person may intervene and pay it supra protest for the honour of any party liable thereon. (See BILL OF EXCHANGE, PAYMENT FOR HONOUR.)

SURETY. A term loosely used for guarantor. "One who contracts with an actual or possible creditor of another to be responsible to him by way of security, in addition to that other, for the whole or part of the debt." (Rowlatt's *Principal and Surety*, 2nd Edition, p. 1.) "A person may become a surety as well by pledging, mortgaging, or charging his property for the debt of another as by pledging his personal credit." (*Ibid.*, p. 8.) The assumption of personal liability is not a necessary element in suretyship. Where

third party security is offered, it is the practice of bankers to try to get a guarantee executed by the surety, supported by such security; where this is not practicable the security is charged on a special form. The depositor of the security is then not responsible personally and recourse can only be had to the security or as much of it as is mentioned in the form of charge.

In *re Conley, Ex parte the Trustee* v. *Barclays Bank, Ltd.* (1938), a wife deposited War Loan as security for her husband's advance. Consequent on the account going into credit, the security was released, and later the husband became bankrupt. In an action for fraudulent preference (*g.v.*) it was held in the Lower Court that a depositor of security for another's debt was not a surety within the meaning of Section 44, Bankruptcy Act, 1914. This was reversed on appeal and it was held that suretyship did not require the assumption of personal liability; the deposit of security for another's debt constituted the depositor a surety.

SURRENDER. Copyhold land was converted into freehold on January 1, 1926. (See COPYHOLD.)

Copyhold property was transferred from one person to another by surrender and admittance. The property was surrendered into the hands of the lord of the manor to the use and behoof of the purchaser. A surrender might be made either in court, or out of court. The actual surrender was usually preceded by a covenant to surrender.

SURRENDER VALUE. The amount which an assurance company will pay, after, say, two or three years' premiums have been paid, to the holder of a life policy, upon a surrender of the policy. An advance should not as a rule, be made upon a life policy beyond the amount of the surrender value. A banker can ascertain the surrender value by applying to the assurance company. Some colonial policies contain a table of surrender values.

A life policy may often be sold at rather more than surrender value. (See LIFE POLICY.)

SUR-TAX. (See INCOME TAX.)

SUSPENSE ACCOUNT. Items which, for one reason or another, cannot be passed at once into the account to which they ought to go, are, in the meantime, debited or credited, as the case may be, to a suspense account. A cheque which is sent direct by one bank to another for collection and payment over, is, in some banks, debited to such an account until advice of the payment is received.

SUSPENSION OF PAYMENT. A debtor commits an act of bankruptcy if he gives notice to any of his creditors that he has suspended, or that he is about to suspend, payment of his debts. (Bankruptcy Act, 1914, Section 1 (1) (*h*).) (See ACTS OF BANKRUPTCY.)

SUSPENSION OF THE BANK ACT. The Bank Charter Act, which imposed certain restrictions upon the issue of Bank of England notes, has on three occasions been suspended by the Government authorising the Bank to issue notes in excess of its authorised issue. The occasions were the monetary crises of 1847, 1857 and 1866. On the outbreak of war with Germany in 1914, the Bank was empowered to suspend the Act, but the authority was not acted upon. (See particulars under BANK CHARTER ACT.)

SWEATING COINS. Rubbing coins together or shaking them in a box or bag in order to obtain gold or silver dust as a result of the friction, is termed "sweating." The process would naturally do the coins great injury. (See COINAGE.)

SYNDIC. When a bank is appointed an executor, probate may be granted to the bank by its corporate name. Previously a nominee or official (called a "syndic") of the bank had to be appointed, to whom administration with the will annexed was granted. By the Administration of Estates Act, 1925, Section 14 (3), "representation shall not be granted to a syndic." (See PROBATE.)

TABLE A. Table A is contained in the first Schedule of the Companies Act, 1948, and supplies model articles of association for the management of a company limited by shares. It contains 136 clauses.

In the case of a company limited by shares and registered after 1st July, 1948 (that is, the commencement of the above named Act), if articles are not registered, or, if articles are registered, in so far as the articles do not exclude or modify the regulations in Table A, those regulations are to be the regulations of the company in the same manner and to the same extent as if they were contained in duly registered articles. (Section 8.)

The borrowing powers of the directors of a company which has adopted Table A are as follows: In the case of companies registered between 1862 and 30th September, 1906, unlimited; in the case of companies registered after 30th September, 1906 (when Table A was revised), limited to the amount of the company's issued capital unless the company sanctions a borrowing in excess.

Companies registered on or after 1st July, 1948, which adopt Table A can exclude temporary loans obtained from their bankers in computing their total outstanding borrowings. Moreover, no lender or other person dealing with the company is bound to see or inquire if the limit is observed.

Companies registered between 1862 and 30th September, 1906, are governed by Table A of the Companies Act, 1862, and those registered between 1st October, 1906, and 31st March, 1909, by the revised Table A of 1906.

Various clauses of Table A will be found under the following headings: CALLS, CERTIFICATE, DIRECTORS, DIVIDEND, LIEN, STOCK, TRANSFER OF SHARES, VOTES. (See ARTICLES OF ASSOCIATION.)

TACK OF LANDS. In Scotland, a lease. As to stamp duty, see under LEASEHOLD.

TACKING. Before the Law of Property Act, 1925, a first mortgagee might advance further sums on the same security and could add or tack such further sums to his first advance in priority to any second mortgagee, of whose existence he was unaware, who had lent money between the time that the first mortgagee had made his first advance and his second advance. Likewise a third mortgagee, who lent money in ignorance of the second mortgage, could, on discovering such second mortgage, take over the first mortgage and tack his third mortgage on to it and thus get priority over the second mortgage.

Tacking, except by a first mortgagee, was abolished by the Law of Property Act, Section 94 (3). The scheme of registration of mortgages unprotected by the relative deeds, made this practicable, for by searching the Land Charges Register a prospective mortgagee can ascertain if any prior encumbrances unprotected by deeds are outstanding. A first mortgagee can still tack if—

(1) he has arranged to that effect with subsequent mortgagees;

(2) he was without notice of any subsequent mortgage at the time he made the further advance;

(3) by the terms of the mortgage deed he is bound to make further advances, in which case he can tack whether he has notice of subsequent mortgages or not.

(See MORTGAGE.)

TAKERS-IN. In connection with the Stock Exchange settlements, a "taker-in" is a broker who lends money against stock (i.e. "takes in" stock) to a broker who requires to pay for a purchase. (See GIVERS ON.)

TAKING UP A BILL. (See RETIRING A BILL.)

TALON. In connection with bearer bonds there is sometimes issued, along with the sheet of coupons, a slip, called a talon, in order that the holder of the bonds may, when all the coupons have been used, exchange it for a new sheet of coupons.

The following is an example of a talon—

"The X & Y Bank of Egypt—Guaranteed Bonds—Talon to be exchanged for a new coupon sheet when all the coupons below have been exhausted.

"No. 16,589."

In the case of government stock certificates to bearer, with the exception of 4 per cent Victory Bonds, talons are not issued and new coupon sheets are obtained by production of the relative stock certificate.

TAPE PRICES. The Stock Exchange prices which are collected by various agents, and which on being telegraphed are recorded by the tape machine on long paper tape.

TAXATION OF BILLS OF COSTS. The examination by the Taxing Master (an officer of the High Court) of bills of costs rendered by solicitors to their clients, or their opponents, in litigation, unfair or incorrect charges being disallowed by the Taxing Master.

TEL QUEL RATE. Also known as an "all in" rate. A banker often uses this rate when he is buying a currency bill on a foreign

centre when the bill has some time to run before maturity. A *tel quel* rate is built up on the telegraphic transfer rate, allowance being made for the time taken in transmission, the days elapsing between arrival in the foreign centre and the maturity, and also for stamps and sundry charges arising from bill collecting expenses.

TELEGRAPHIC TRANSFERS. (Often called T.Ts.) The payment of money in a foreign country may, when necessary, be effected by telegraph, the banker in London sending a cable, with the necessary particulars, to his foreign correspondent. The cost of the cable is charged to the customer at whose request the transfer is made, unless the banker is instructed that charges are to be borne by the payee. Payment may be made to the payee (*a*) under advice, (*b*) on application and identification, (*c*) to credit of payee's account at ..... Bank, according to the directions given by the remitter. Cable transfers are transmitted in currency when practicable unless they are specially required in sterling, and the remitter has the choice of having the cable sent at urgent, ordinary, or deferred rate.

The form of request, which is signed by a customer when he requires his banker to cable money abroad, should contain a clause to the following effect: "I request that you will (using your telegraphic code as required) transfer the amount by telegraph on the understanding that you do so at my risk in every respect." An exporter of goods from this country can, as soon as he has shipped the goods, communicate with his agent abroad by wire to sell the goods at once, and send payment immediately by telegraph through a London banker.

TELLER. A term sometimes used for a bank cashier; one who "tells," i.e. counts. (Anglo-Saxon *tellen* = to count.)

TENANT FOR LIFE. (See LIFE TENANT, SETTLED LAND.)

TENANCY IN COMMON. Before the Law of Property Act, 1925, a tenancy in common existed where land was held by two or more persons in undivided shares, the revenue therefrom being shared jointly. On the death of a tenant in common, his interest passed to his heir or devisee. This was the distinction between tenancy in common and joint tenancy, for in the latter case the interest of a deceased joint tenant passed to the survivor(s) and on the death of the last survivor, the entire interest passed to the beneficiaries or heirs of such party.

Tenancy in Common was a legal estate; by the Law of Property Act, 1925, however, it was abolished as such but can exist in equity. That is to say, the legal estate in the property is vested in trustees for sale, who hold the legal estate for the beneficiaries, i.e. the tenants in common in equity. Thus if A and B jointly own property they have a dual role—they are trustees for sale jointly holding the legal estate and they are beneficiaries under the trust. If A dies, his interest in the proceeds of sale passes to his estate, but the legal estate remains in B, who will have to co-opt another trustee if and when the property is sold, in order to give a valid receipt for the capital moneys. The legal estate cannot be vested in more than four trustees for sale, and thus if six persons are jointly interested in a property, the first four will hold as trustees for themselves and the last two. (See also JOINT TENANTS.)

TENENDUM. (See HABENDUM.)

TERM OF A BILL. The period for which a bill of exchange is drawn.

TERMINABLE ANNUITY. An annuity, or annual payment of a certain sum, which ceases at the expiration of a specified time, or upon the death of an individual. (See ANNUITY.)

A terminable annuity is a form of borrowing by the Government when it is desired to repay the loan gradually out of revenue. The lender receives annually interest for the money and an instalment of the principal. At the end of the period for which the loan was arranged, the yearly instalments will have repaid the debt and the annuity will be terminated. The National Debt Commissioners (on behalf of the Post Office, etc.) are the principal investors in these annuities. They are not offered to the public as investments.

TERMINATING BUILDING SOCIETY. A society which, by its rules, is to terminate at a fixed date, or when a result specified in its rules is attained. (See BUILDING SOCIETY.)

TESTING CLAUSE. (See ATTESTATION.)

THIRD ACCOUNT. The person for whose account a bill is drawn is commonly spoken of as the "third account."

THIRD PARTY. For example, where security is given to a banker for a customer's account by another person, that person is called the "third party"; the security being termed a "third party security" or collateral security. A guarantor is a "third party." (See COLLATERAL SECURITY, GUARANTEE.)

THIRD OF EXCHANGE. (See BILL IN A SET.)

THREEPENCE. Formerly a silver coin with a standard weight of 21·81818 grains troy. (See COINAGE.)

By an Order in Council dated 18th March, 1937, a new type of threepenny piece was made legal tender for sums not exceeding two shillings. This coin, duodecagonal in shape, weighs 105 grains, and is an admixture of copper, nickel, and zinc.

By the Coinage Act, 1946, silver coinage was abolished.

THROUGH BILL OF LADING. (See BILL OF LADING.)

TICKET DAY. Also called Name Day. The second day in the semi-monthly settlement on the London Stock Exchange is ticket day, when brokers pass the names of the purchasers of stocks since the last settlement, certain "tickets" being exchanged preparatory for the fifth day, which is pay day. (See SETTLING DAYS, STOCK EXCHANGE.)

TIME BARGAIN. A bargain to buy or sell certain stocks or shares at a certain price on a specified date. A purchaser hopes that the security will rise before the appointed time so that he may sell at a profit. (See OPTIONS.)

TIME OF PAYMENT OF BILL. BILL PAYABLE ON DEMAND. By Section 10 of the Bills of Exchange Act, 1882—

"(1) A bill is payable on demand—

"(*a*) Which is expressed to be payable on demand, or at sight, or on presentation; or

"(*b*) In which no time for payment is expressed.

"(2) Where a bill is accepted or indorsed when it is overdue, it shall, as regards the acceptor who so accepts, or any indorser who so indorses it, be deemed a bill payable on demand."

No days of grace are allowed on a bill payable on demand, at sight, or on presentation.

BILL PAYABLE AT A FUTURE DATE. By Section 11—

"A bill is payable at a determinable future time within the meaning of this Act which is expressed to be payable—

"(1) At a fixed period after date or sight.

"(2) On or at a fixed period after the occurrence of a specified event which is certain to happen, though the time of happening may be uncertain.

"An instrument expressed to be payable on a contingency is not a bill, and the happening of the event does not cure the defect."

A document expressed to be payable "thirty days after the arrival of the ship *Swallow* at Calcutta," or "ninety days after sight or when realised" could not be supported as a bill of exchange, for it is quite indefinite when these uncertain events would probably be reduced to a certainty. (*Palmer* v. *Pratt*, (1824), 2 Bing. 185.)

As to the computation of time of payment of a bill payable after date, the Act provides as follows—

"14. Where a bill is not payable on demand the day on which it falls due is determined as follows—

"(1) Three days, called days of grace, are, in every case where the bill itself does not otherwise provide, added to the time of payment as fixed by the bill, and the bill is due and payable on the last day of grace; provided that—

"(*a*) When the last day of grace falls on Sunday, Christmas Day, Good Friday, or a day appointed by Royal Proclamation as a public fast or thanksgiving day, the bill is, except in the case hereinafter provided for, due and payable on the preceding business day;

"(*b*) When the last day of grace is a bank holiday (other than Christmas Day or Good Friday) under the Bank Holidays Act, 1871, and Acts amending or extending it, or when the last day of grace is a Sunday and the second day of grace is a bank holiday, the bill is due and payable on the succeeding business day.

"(2) Where a bill is payable at a fixed period after date, after sight, or after the happening of a specified event, the time of payment is determined by excluding the day from which the time is to begin to run and by including the day of payment.

"(3) Where a bill is payable at a fixed period after sight, the time begins to run from the date of the acceptance if the bill be accepted, and from the date of noting or protest if the bill be noted or protested for non-acceptance, or for non-delivery.

"(4) The term 'month' in a bill means a calendar month."

With reference to the words, in Section 14 (2), "by excluding the day from which the time is to begin to run," the *Journal of the Institute of Bankers* has pointed out that mercantile usage has long ordained that from 30th November to 30th December is a month in calculating the due date of a bill. It might be contended that such a period, by including both dates, is one day more than a month, and therefore, in order to remove possible doubt, the Act says exclude the day from which the time is to begin to run.

"92. Where, by this Act, the time limited for doing any act or thing is less than three days, in reckoning time, non-business days are excluded.

"'Non-business days' for the purposes of this Act mean—

"(*a*) Sunday, Good Friday, Christmas Day:

"(*b*) A bank holiday under the Bank Holidays Act, 1871, or Acts amending it:

"(*c*) A day appointed by Royal proclamation as a public fast or thanksgiving day.

"Any other day is a business day."

The due date of a bill—that is, the date when it becomes payable—is calculated, in the case of a bill drawn payable three months after date, by counting three calendar months, plus three days of grace, from the date of the bill. When drawn payable at so many days or months after sight, the date is calculated in the same way, but from the date when the bill was sighted. If the acceptor writes on the bill "sighted 1st February, accepted 2nd February," the currency is calculated from the date when it was sighted, 1st February.

A few examples of the calculation of the time of payment are shown on the following pages. In each case, if the last day of grace is a Sunday or holiday, the bill will be due and payable either on the preceding business day or succeeding business day in accordance with the provisions of Section 14 (1) (*a*) and (*b*). (See above.)

The time of payment of bills payable in foreign countries is regulated by the laws and customs of those countries.

In France, for example, a bill which is due on a Sunday is payable on the Monday, and does not take any days of grace, and the same custom is observed in most of the other continental countries. (See BANK HOLIDAYS, BILL OF EXCHANGE, DAYS OF GRACE.)

TIME POLICY. (See MARINE INSURANCE POLICY.)

TITHES. Originally the tenth part of the annual crop or produce of stock given voluntarily in support of the Church, tithes were commuted (1836) into annual rent charges fluctuating with the price of corn and payable by the landlord. These charges were stabilised in 1925.

The Tithe Act, 1936, provided for the extinguishment of tithe rent charges as such and for their replacement by redemption annuities running for a term of sixty years from 2nd October, 1936. For every £100 of tithe rent charge on agricultural land at 1st April, 1936, an annuity of £91 11s. 2d. is payable. In the case of non-agricultural land, the annuity is £105. Where the annuity would exceed one-third of the Schedule B assessment, one-half of the excess is remitted. Tithe owners receive Redemption Stock to take the place of extinguished tithes on the basis of £91 11s. 2d. of Stock for £100 of ecclesiastical tithe or £105 of Stock for £100 of tithe payable to a lay tithe owner. The Tithe Redemption Commission was established to set the scheme in operation, to collect the annuity payments during the first years, and to prepare a public register and map relating to all such annuities. Its duties will eventually be taken over by various official departments.

The existence of a heavy annuity charge reduces correspondingly the capital value of the relative land and Section 13 (8) of the 1936 Act provides that an annuity is to be deemed an incumbrance for the purposes of Section 183 of the Law of Property Act, 1925 (relating to concealment upon disposal). It is not capable of being registered as a Class A or B charge in the Land Charges Register under Section 10 (1) of the Land Charges Act, 1925, as are charges in respect of voluntary tithe redemption under Section 6 (1) of the Tithe Act, 1918.

TITLE DEEDS. A person's right or title to a piece of land is proved by the documents called "title deeds." They show in whom the legal estate is vested, and how, through a long course of years, the land has been transferred from one person to another by deed or by will, till finally it is transferred to the present owner. The present owner may have acquired his title to the land in one of several ways, he may have bought the property, or inherited it, or have had it left to him by will, or have had a present made of it or obtained it through foreclosure of a mortgage.

The greatest interest that a person can have in land is the fee simple, that is he is the absolute owner, and a conveyance to a purchaser of freehold land used to include the clause "to have and to hold all the said hereditaments . . . unto and to the use of the said John Brown in fee simple," or "unto and to the use of the said John Brown, his heirs and assigns for ever." In such a case the fee simple is vested in John Brown.

After 1925, words of limitation in a conveyance are not necessary. (See under CONVEYANCE.)

The only estates in land capable of existing at law are (after 1925)—

(*a*) an estate in fee simple absolute in possession. (Freehold);

(*b*) a term of years absolute. (Leasehold.) (See LEGAL ESTATES.)

If John Brown lodges a parcel of deeds of a freehold estate as security, the deeds and documents should, if they are complete, show that the fee simple is vested in John Brown. The estate may in past years have been sold many times, and been mortgaged and reconveyed, owners may have died and bequeathed it by will, or they may have died and left no will, but whatever has been done with the property the fee simple has always been vested in someone. The deeds and documents which Brown has deposited as showing his title to the fee simple should therefore, as far as they go, reveal an unbroken line of steps by which the fee simple has come to him.

Along with the deeds there is usually, though not always, an abstract of title (*q.v.*). The abstract is prepared by the vendor's solicitor and gives, in order of date, a summary of all the deeds, wills or other documents, and also all other particulars which are necessary to show the purchaser how his title is derived. The abstract begins with what is called the "root of title," and follows the title step by step till it reaches the vendor. When a sale is arranged it may be agreed in the contract to commence with a certain deed as the root of title, but if no special agreement is made, the purchaser has the right to require evidence of the title for the last thirty years. A title of twenty years is often accepted as sufficient. By the Law of Property Act, 1925, Section 45 (6), recitals, statements and descriptions of facts, matters and parties contained in deeds, instruments, Acts of Parliament or statutory declarations, twenty years old at the date of the contract, shall, unless and except so far as they shall be proved to be inaccurate, be taken to be sufficient evidence of the truth of such facts, matters and descriptions.

All the deeds and documents which are

A bill dated (or sighted)	January 1, payable one month after date (or sight), is due and payable on February 4.
" " "	February 1, payable one month after date (or sight), is due and payable on March 4 (if leap year it is still due March 4).
" " "	February 1, payable thirty days after date (or sight), is due and payable on March 6 (if leap year on March 5).
" " "	March 1, payable thirty days after date (or sight), is due and payable on April 3.
" " "	April 1, payable thirty days after date (or sight), is due and payable on May 4.
" " "	January 28, payable one month after date (or sight), is due and payable on March 3 (if leap year on March 2).
" " "	January 29, payable one month after date (or sight), is due and payable on March 3.
" " "	January 30, payable one month after date (or sight), is due and payable on March 3.
" " "	January 31, payable one month after date (or sight), is due and payable on March 3.
" " "	January 1, payable three weeks (= 21 days) after date (or sight), is due and payable on January 25.
" " "	November 28, payable three months after date (or sight), is due and payable on March 3 (if leap year on March 2).
" " "	November 30, payable three months after date (or sight), is due and payable on March 3.
" " "	May 31, payable one month after date (or sight), is due and payable on July 3.
" " "	February 28 (following year being leap year), payable twelve months after date (or sight), is due and payable on March 2.
" " "	February 29 (leap year), payable twelve months after date (or sight), is due and payable on March 3.
" " "	March 1, payable "one month after date, without days of grace," is due and payable on April 1.

A bill dated (or sighted) March 1, payable { at sight / on presentation / on demand } is due and payable on demand and no days of grace are allowed.

A bill dated March 1, payable one month after date, is due and payable April 4; if accepted "payable on 1st April," present on April 1; if days of grace are then claimed, have the bill noted and give notice to the indorsers, and present again on April 4.

" " March 1, payable one month after date (if accepted "Payable at X & Y Bank, Leeds. J. Brown 25th February") is due and payable on April 4.

" " March 1, payable one month after *sight*, and is "accepted 2nd March, payable, etc.," is due and payable on April 5.

" " March 1, payable one month after sight, and is "sighted 2nd March, accepted 3rd March, payable, etc.," is due April 5.

A bill drawn "on 1st March pay, etc.," is due and payable on March 4.

" " "on 1st March (fixed) pay, etc.," is due and payable on March 1.

The time of payment of a promissory note, drawn payable "after date," is calculated in the same way as an ordinary after date bill.

A foreign bill, payable in *this* country, is reckoned in the same way as an inland bill.

When the last day of grace falls on Sunday a bill is payable on the preceding business day.

" " " Christmas Day " " " "

" " " Good Friday " " " "

" " " a day appointed by Royal proclamation as a public fast or thanksgiving day a bill is payable on the preceding business day.

(Christmas Day and Good Friday are Common Law holidays in England, but they became Bank Holidays in Scotland by the Bank Holidays Act of 1871. After that date, a bill falling due on those days was payable on the preceding business day in England, and on the succeeding business day in Scotland. This difference, however, was remedied by the Bills of Exchange Act, 1882, which makes a bill, where the last day of grace falls on those days, whether in England or in Scotland, payable on the preceding business day.) If the last day of grace is a Sunday and the second day of grace is a Bank Holiday, a bill is payable on the succeeding business day (see Section 14 above). A difference thus arises between the rule in England and the rule in Scotland as to the date of payment, when Christmas Day falls on a Saturday and a bill is due on 26th December (Sunday). In Scotland, where Christmas Day is a statutory Bank Holiday it is payable on the succeeding business day, i.e. 27th—Monday (Monday, Boxing Day, is not a holiday in Scotland), but in England, where Christmas Day is a common law holiday (not a statutory Bank Holiday), the bill is payable on the preceding business day, i.e. Friday, 24th.

When the last day of grace falls on

England.

" " " Easter Monday, a bill is payable on the succeeding business day.

" " " Monday in Whitsun week " " " "

" " " First Monday in August " " " "

" " " December 26 (if a week day) " " "

" " " December 27 (if 26th is a Sunday) " " "

" " " December 26 (if a Sunday) a bill is payable on 24th.

Scotland.

" " " December 26 (if a Sunday), a bill is payable on Monday, 27th.

" " " New Year's Day (if a week day) a bill is payable on the succeeding business day.

" " " Monday after New Year's Day (if New Year's Day is a Sunday) a bill is payable on the succeeding business day.

" " " Monday after Christmas Day (if Christmas Day is a Sunday) a bill is payable on the succeeding business day.

" " " First Monday in May a bill is payable on the succeeding business day.

" " " First Monday in August a bill is payable on the succeeding business day.

" " " Monday Bank Holiday, a bill is payable on the Tuesday.

" " " Monday Bank Holiday, Tuesday a public fast or thanksgiving day by Royal proclamation, a bill is payable on the Wednesday.

" " " Tuesday a public fast or thanksgiving day by Royal proclamation. Monday Bank Holiday, a bill is payable on the Saturday.

" " — " Sunday, and Saturday is a Bank Holiday, a bill is payable on the Monday.

" " " Saturday, a Bank Holiday, a bill is payable on the Monday.

referred to in the abstract of title may be found in the parcel handed to the banker, but very frequently the deeds which are abstracted will not all be obtainable. The abstract shows how the purchaser's title is derived, but not, necessarily, the deeds which are to be given to the purchaser. The purchaser may receive several deeds, for example, the conveyance to himself, the conveyance to the vendor and some deeds prior to the date when the vendor acquired the land; or the purchaser may perhaps receive only one deed, the conveyance from the vendor, and an abstract of title. The purchaser may look at the abstract and see how the land has been dealt with for thirty years past, or for so long as has been agreed upon, but all the deeds and documents relating to the past transactions may for one reason or another be in the possession of other persons.

There are various reasons why the owner of a property may not have possession of certain prior deeds, e.g. the seller may have retained part of the property to which the deeds relate; or they may be in the hands of a mortgagee; or the property may, originally, have been part of a larger estate, and no prior deeds have been handed over on a sale. Where there is a defective title or document, the contract or special conditions of sale often state the defect and preclude a purchaser from raising any objection to it, and this may, in some cases, be the explanation why a defective title has been taken.

If the purchaser, through his solicitor, is satisfied with the title, after investigation or inspection of any of the abstracted documents, he usually receives an acknowledgment, either in the conveyance or by a separate document (stamped as an agreement, 6d. if under hand, 10s. if under seal) of his right to production of the documents. Where a person retains possession of documents, and gives to another an acknowledgment in writing of the right of that other to production of those documents and to delivery of copies thereof, that acknowledgment (by Section 64 of the Law of Property Act, 1925), shall bind the documents to which it relates in the possession or under the control of the person who retains them, and in the possession or under the control of every other person having possession or control thereof from time to time, but shall bind each individual possessor or person as long only as he has possession or control thereof; and every person so having possession or control from time to time shall be bound specifically to perform the obligations imposed under this Section by an acknowledgment, unless prevented from so doing by fire or other unavoidable accident. The obligations imposed under this Section by an acknowledgment are—

(1) To produce the documents at all reasonable times for the purpose of inspection, etc. (2) To produce them at any trial, hearing or examination in any Court, etc., for proving or supporting the title of the person entitled to request production. (3) To deliver to the person entitled true copies or extracts of the documents or any of them.

The expenses of the performance of those obligations are payable by the person requesting performance. The acknowledgment does not confer any right to damages for loss or destruction of the documents.

If the person retaining possession of the documents gives an undertaking in writing for the safe custody thereof, unless prevented from so doing by fire or other unavoidable accident, and the documents are lost or destroyed, the Court may, if it thinks fit, direct an inquiry respecting the amount of damages and order payment thereof by the person liable.

Mortgage deeds and reconveyances form part of the chain of title and should be preserved with the other documents relating to the property. After 1925, a receipt takes the place of a reconveyance. (See MORTGAGE, STATUTORY RECEIPT.)

When a banker receives part only of the deeds which are recited in the abstract of title, he will look to see if an acknowledgment is given for the production of the deeds necessary to complete the title. If the only deed held by the banker is a conveyance from Brown to Jones, there should be an abstract of Brown's title and an acknowledgment from him to produce the conveyance or other documents under which he obtained his title to the land. The conveyance to Jones should be duly signed and sealed by Brown, and the stamp should be examined to see that it is correct. (See CONVEYANCE.)

The description and quantity of the land in the conveyance to Jones should be compared with the description and quantity in the prior deeds, or as shown in the abstract or plan if there is one. It may, of course, be that Jones has purchased the land with only one house thereon, whereas an examination of the abstract may show that originally

there was much more land and were many more houses. Or again, the conveyance to Jones may show that he purchased land with, say, six houses, but since he bought it he may have sold several of the houses. The banker should therefore be at trouble to ascertain how many houses still remain unsold. There may be indorsements on the conveyance setting forth the facts of each sale, but it should not be forgotten that the houses may have been sold and yet no indorsement of sale appear upon the conveyance. There is no obligation upon a solicitor to indorse a sale, though it is very desirable that it should be indorsed. A conveyance may, therefore, be for land on which has been built whole streets of houses, and, looking at the consideration, which may be for thousands of pounds, the banker may easily think at first sight that it is a most valuable security, but, after investigation and an actual inspection of the property, he may find that all that remains, to take an extreme case, is one house.

The consideration in the last conveyance may be much smaller than in previous deeds. This may be because the last deed represents only a part of the property contained in the earlier deeds; or it may indicate that the property has suffered a serious fall in value.

A seal should be opposite each signature to a deed. It is usual, though not absolutely necessary, that the execution of the deed should be witnessed.

The banker should see that the legal estate is conveyed to Jones free from all charges or mortgages, or if the land has been mortgaged, that the mortgage has been discharged. If it previously belonged to Smith and he died, charging it in his will with the payment of various legacies, evidence that the legacies have been satisfied and all death duties paid should be produced.

Some bankers require that the title of all deeds offered as security should be investigated by their solicitors, but there are many cases in which a banker is dependent upon his own examination of the title. Where a banker knows his customer and is already well acquainted with the property represented by the deeds, and has (as often is the case in country towns) a good knowledge of the history of the property, knowing from whom it was acquired, he will, as a rule, feel satisfied, in taking such a security, that he is quite safe. But in the absence of such knowledge and in the presence of a title which is not entirely clear, he would not, as a rule, be justified in advancing money upon the security until he had received a report upon the title from his solicitor.

Whenever possible, a banker should inspect the property which is offered to him as security, for what looks very valuable on parchment may be quite the opposite in reality.

If a bundle of old deeds is handed to the banker along with the more modern ones the old ones should not be refused. In *Dixon* v. *Muckleston* (1872), L.R. 8 Ch. 155 certain earlier deeds of a farm were pledged with a private party for a loan, he being informed in writing that they were the title deeds of the farm, and some later deeds of the farm were lodged with bankers as security. It was held that the first deposit created an equitable charge, and that the owner of the prior charge had not been guilty of negligence.

Some bankers accept deeds as security and do not take any document of charge, but, as a rule, a banker takes either a legal mortgage (see MORTGAGE) or a memorandum of deposit (*q.v.*). Where the security consists of houses there should be a fire insurance policy and the banker should see, by obtaining the receipts, that the premiums are duly paid.

It has been held that a deposit of title deeds for the purpose of securing a debt, without any document of charge whatever, is an equitable mortgage. The deeds, however, must have been deposited expressly as a security in order to give the banker a charge upon the property represented by the deeds, and must not be entered in the safe custody records. If a borrower should contend that the deeds were left with the banker for some other reason than for security, the latter may have much trouble to defend his claim, whereas if a memorandum of deposit is taken no such contention could be maintained.

See further under EQUITABLE MORTGAGE with respect to deeds deposited with a memorandum of deposit or without any document of charge.

Where an agent is authorised to deposit title deeds as security, and he exceeds his authority and borrows more than he was empowered to borrow, the principal will be liable for the full amount borrowed, provided that the banker was not aware of the extent of the agent's power to borrow. As a rule, however, a banker would require clear evidence of an agent's authority to borrow and of the limits of that authority.

Where a deed is executed under a power of attorney, the power, or an attested copy thereof, should accompany the deed.

By Section 8 of the Real Property Limitation Act, 1874, it was provided that no action or suit or other proceeding shall be brought to recover any sum of money secured by any mortgage, judgment, or lien, or otherwise charged upon or payable out of any land or rent, at law or in equity, or any legacy, but within twelve years next after a present right to receive the same shall have accrued to some person capable of giving a discharge for or release of the same, unless in the meantime some part of the principal money, or some interest thereon, shall have been paid, or some acknowledgment of the right thereto shall have been given in writing, signed by the person by whom the same shall be payable, or his agent, to the person entitled thereto or his agent; and in such case no such action or suit or proceeding shall be brought but within twelve years after such payment or acknowledgment, or the last of such payments or acknowledgments, if more than one, was given.*

Where deeds are to be lent to a solicitor, the customer's written authority to lend them should be obtained, and the solicitor should give his undertaking to return them in the same condition.

If the customer desires that the deeds be given up to a solicitor against payment to his credit of a certain sum, or repayment of the overdraft, the authority and undertaking should be worded accordingly.

When the title deeds of a company's property are given as security, whether mortgaged or lodged under a memorandum of deposit, or without any document of charge, the charge so created must be registered. (See COMPANIES, REGISTRATION OF CHARGES.)

A legal or an equitable mortgage, which is not protected by a deposit of deeds, requires registration under the Land Charges Act, 1925. (See LAND CHARGES.)

As to charges on land within the jurisdiction of a local deeds registry see YORKSHIRE REGISTRY OF DEEDS. As to registered land see under LAND REGISTRATION. See also the article MORTGAGE, which details the provisions of the Law of Property Act, 1925, regarding mortgages, and gives a list of the registrations and searches which are necessary.

In Scotland a deposit of title deeds, either with or without a memorandum of deposit, does not create an equitable mortgage, as in England. If, therefore, an advance is granted by a banker in England upon heritage (real) property in Scotland, the form of charge must conform to the law of Scotland. (See DISPOSITION ABSOLUTE.) (SEE VALUATION.)

Production to Commissioners of Instruments Transferring Land.

On the occasion of—

(*a*) any transfer on sale of the fee simple of land;

(*b*) the grant of any lease of land for a term of seven or more years;

(*c*) any transfer on sale of any such lease;

the instrument by which the transfer is effected, or the lease granted, must be produced to the Commissioners of Inland Revenue within thirty days after execution, or, in the case of an instrument first executed at any place out of Great Britain, after the instrument is first received in Great Britain. No instrument required by this Section to be produced shall be deemed to be duly stamped unless it is stamped with a stamp denoting that the instrument has been produced. This Section came into operation on 1st September, 1931. (Finance Act, 1931, Section 28.)

TITLE DEEDS. NOTES RE TITLE. It is impracticable to detail all the points which may require attention when examining title deeds, but the following are some of the more important of them—

There should be an ABSTRACT OF TITLE. The purchaser has the right to one unless there was a special condition in the contract to the contrary. (See ABSTRACT OF TITLE, ROOT OF TITLE.)

The Abstract should commence with the root of title. A purchaser of land is entitled to a thirty years' title, but he may agree to accept a shorter, or the conditions of sale may stipulate for a shorter.

Sort the deeds in order of date.

Compare with the abstract to see that all are there.

If there are deeds on the abstract which are not deposited, there should be an acknowledgment for production and safe custody from the person who retains possession of them, either in the purchase deed, or by a separate document.

If the abstract, showing the title of the person who deposits the deeds, is a recent one, a banker may consider that, as the title has just been overhauled by a solicitor, it will be sufficient if he sees that he holds the deeds, as per the

* This has been re-enacted in the Limitation Act, 1939, Section 18.

abstract, or an acknowledgment for production, and examines the last deed.

CONVEYANCE—

Is it signed and sealed by the vendor? and does the signature appear to be genuine?

If the property is conveyed to more than one person, see the provisions of the Law of Property Act, 1925, under JOINT TENANTS, and TENANCY IN COMMON.

Is it witnessed? If in Yorkshire is it registered? (See YORKSHIRE REGISTRY OF DEEDS.)

Is it correctly stamped? (See CONVEYANCE.)

Is the land conveyed to the depositor free from all charges and incumbrances? (See FEE SIMPLE.)

Observe carefully what follows the clause "To have and to hold . . ." It may go on to say "Subject to a certain mortgage . . ." (See MORTGAGE.)

If it does, has the mortgage been discharged and is it with the deeds? If not with the deeds, it should be asked for. It may still be a charge on the property. Or the mortgage may be with the deeds and not have been discharged. Is the receipt or reconveyance stamped? (See RECONVEYANCE.)

If there have been any mortgages since the last conveyance, have they all been discharged? (See NOTICE OF SECOND MORTGAGE, PRIORITIES.)

What is the consideration?

How does the amount compare with the consideration, some years ago?

If more, what has caused the increase? Have houses been built?

If less, is that due to portions having been sold, or to a depreciation in the value of the property?

Are there any memoranda of sales indorsed upon the deed?

Have any sales taken place which are not indorsed upon the deed? This is a very frequent occurrence and most misleading.

Are the particulars of the property in the last deed the same as in the first abstracted deed? If not, what has caused the difference?

The last deed may show five houses, whereas the prior deeds only refer to two. Have three more been built, or the two converted into five, or have three more been purchased from another source?

If the land contained in the last deed has been obtained from several sources trace each portion separately. It is a good plan to make notes of names, dates, and quantities when trying to follow a confused title.

How is the purchaser affected by any covenants in the deed? For example, is he responsible for the making or maintenance of any roads?

On a death, real estate devolves on the personal representatives of the deceased and they are the representatives in regard to his real estate as well as in regard to his personal estate. (Administration of Estates Act, 1925, Section 1.)

Before accepting as security deeds of land which has been acquired under a will the assent of the personal representatives to the person entitled to it should be deposited with the deeds. The assent must be in writing, signed by the personal representatives, and must name the person in whose favour it is given, and it operates to vest in that person the legal estate to which it relates. There is no stamp duty on an assent. (Section 36.)

The purchaser of a legal estate is not concerned with the death duties affecting it unless a land charge is registered to protect the Inland Revenue charge. (See DEATH DUTIES.)

If a mortgage from Jones to Brown is deposited to secure Brown's account, notice of the fact should be given to Jones, and the banker should ascertain from Jones what amount is still owing, but see further information under MORTGAGE.

LEASEHOLDS—

In addition to the above points so far as they apply—

What is the length of the lease, and the amount of the ground rent?

Is the rent paid up to date? The receipt should be produced. A receipt for the rent means, as a rule, that all covenants have been observed up to date.

If the lessor's licence or consent in writing to assign or mortgage is necessary, has it been obtained? (See LEASEHOLD.)

VALUE—

See the property and identify it with the description in the deeds.

What is its saleable value?

By whom is it occupied?

At what rent? If in own occupation inspect poor rate assessment and obtain

gross estimated rental and rateable value. This can be obtained, without charge, by a ratepayer at the office of the clerk to the assessment committee.
What are the rates?
Is there any ground or other rent?
Are all houses let, and in what sort of repair?
Is the district an improving one, or the contrary?
Are there many houses vacant in the neighbourhood?
Are the houses dependent for tenants mainly upon one works?
Is there any nuisance in the neighbourhood which may affect the value of the property?
How far is the property from a railway station?
Is the street made and taken over by the town?
An outlying property is often difficult to realise, and this should be considered in estimating the value.
If the security consists of mines, or works, the report of a specialist is necessary.
It should always be remembered that, in the case of a security representing a large amount, there will, as a rule, be great difficulty when the security is to be realised, in finding anyone to take it up, if indeed anyone ever is found. (See VALUATION.)

INSURANCE—

Is all the insurable property insured in a good office? (See FIRE INSURANCE.)
In the case of licensed premises, is the value of the licence insured? (See LICENSED PROPERTY.)
Is the last premium receipt with the deeds?
Has the Fire Office notice of the bank's interest?
In the case of leasehold property, does the lease stipulate that the premises must be insured in a particular company, and in the joint names of the lessor and lessee?

In the article MORTGAGE there is a summary of the registrations which are required in taking certain mortgages and charges, and of the searches which should be made, to ascertain if there is any existing registered charge against the land.

(See ABSTRACT OF TITLE, BENEFICIAL OWNER, BUILDING SOCIETY, COLLATERAL SECURITY, COPYHOLD, CUSTOMARY FREEHOLD, DEED, DEED OF GIFT, EQUITABLE MORTGAGE, EQUITY OF REDEMPTION, FEE SIMPLE, FORECLOSURE, FREEHOLD, FRIENDLY SOCIETY, INDENTURE, JOINT TENANTS, LAND CERTIFICATE, LAND REGISTRATION, LEASEHOLD, LEGAL MORTGAGE, LIEN, MEMORANDUM OF DEPOSIT, MORTGAGE, ROOT OF TITLE, TENANCY IN COMMON, YORKSHIRE REGISTRY OF DEEDS.)

TOKEN MONEY. English cupro-nickel and bronze coins are token money; that is, the value of the metal in them is less than the value attached to the coins by law. Cupro-nickel is legal tender only to the extent of forty shillings, and bronze to the extent of one shilling. The George VI threepenny piece (nickel-brass) is also a token coin and is legal tender to the extent of two shillings. (See COINAGE, LEGAL TENDER.)

TONTINE POLICY. A life policy on which no bonus is payable in the event of the death of a policy holder, such bonus only vesting on the policy maturing at the end of a given period, usually fifteen or twenty years. During that term of years (the Tontine period) the policy will not have a surrender value. In the case of an ordinary endowment assurance, the bonus additions are payable in the event of the death of the assured, or on such policy maturing.

The word "Tontine" is derived from Tonti, an Italian banker of the seventeenth century, who invented a Tontine annuity, an annuity shared by subscribers to a loan, with the benefit of survivorship, the annuity being increased as the subscribers died. (Palgrave's *Dictionary of Political Economy*.)

TORT. A civil wrong which arises independently of any contract.

TOWN CLEARING. Before the war of 1939–1945, it embraced banks within roughly one square mile of the Bank of England. On the evacuation of the London Bankers' Clearing House to Stoke-on-Trent on the outbreak of war in 1939, and the establishment of a General Clearing there, the Town Clearing remained in London with its area considerably restricted. Moreover, its operations were confined to the clearance of cheques paid in at Town Clearing branches on other Town Clearing branches. The number of such branches or offices was considerably curtailed. Cheques on Town Clearing branches paid in at banking offices outside the area were cleared through the General Clearing. There are now two Town Clearings daily, the second being confined to articles of £5,000 and over.

The rules for the Town Clearing are given under CLEARING HOUSE.

TRADE BILL. A bill drawn in connection with actual trade operations. The term is used to distinguish the paper from a bank bill or from a "kite" or "accommodation bill" (*q.v.*).

TRADE DISCOUNT. Wholesale traders sometimes issue price catalogues in which goods are listed at standard prices. From such prices a deduction is made called Trade Discount and the net figure represents the real selling price for the time being (which may be subject to Cash Discount).

The advantage of the system is seen where wholesale prices are subject to frequent movements. Such movements are adjusted by an advice to customers of an altered rate of Trade Discount; otherwise the laborious and expensive method of issuing a fresh catalogue would result. Trade Discount must not be confused with Cash Discount (*q.v.*).

TRADERS' CREDITS. In 1930 a scheme was set up by the banks whereby customers are enabled to settle their trade accounts without drawing and remitting cheques in individual settlement. Under the scheme a customer hands in a cheque for the total amount of the accounts he wishes to pay, accompanied by a form setting out the name of each creditor, the bank and branch where such creditor's account is kept, and the amount to be credited. The customer also furnishes the bank with a separate credit slip for each creditor.

An essential part of the scheme is that a written consent from each creditor must be furnished to the bank to the effect that he is agreeable to be credited in account with the sums due to him from time to time.

The scheme has been largely adopted and has resulted in considerable saving of money and labour to both the customers and the banks, principally by avoiding the drawing and clearance of individual cheques. Any small charge made by the banks for the services is offset by the saving of labour, etc., on the part of the customer.

TRADING ACCOUNT. The account of a business concern which shows how the gross profit has been arrived at. For example, in a manufacturing business there may appear on the credit side—

Amount of sales.

Stock on hand at end of period.

And on the debit side—

Amount of stock at commencement of period.

Purchases and carriage.

Productive wages.

Balance, gross profit (carried to Profit and Loss Account).

TRANSFER CERTIFICATE. In the few companies which do not issue a fresh certificate upon a transfer of the shares, a transfer certificate is issued to be preserved along with the original certificate. For example, where John Brown holds ten certificates for one share each in the Kingmoor Water Company, Ltd., and he sells the shares to John Jones, the company gives Jones a transfer certificate in the following form—

I do hereby certify that a deed of transfer of ten ordinary shares, etc., in the Kingmoor Water Company, Ltd., bearing the date day of 19 , from John Brown, of to John Jones, of , has been deposited at the office of the said Company in Carlisle, and duly registered in their books on the day of , 19 .

Secretary.

The ten old certificates and the transfer certificate are, of course, kept by Jones.

TRANSFER FEE. The fee which is generally payable to a company upon the registration of a transfer of shares or stock. The fee is usually 2s. 6d. (See TRANSFER OF SHARES.)

TRANSFER IN BLANK. (See BLANK TRANSFER.)

TRANSFER OF MORTGAGE. Where a mortgagor is entitled to redeem, he may require a mortgagee, instead of reconveying the property to him, to assign the mortgage debt and convey the mortgaged property to a third party, and the mortgagee is bound to comply. (Section 95, Law of Property Act, 1925.)

On the other hand, a mortgagee has the right to dispose of the mortgage by transfer to a third party.

The old method of transfer of a mortgage by a mortgagee was by a conveyance of the fee simple vested in him to the transferee, coupled with an assignment of the mortgage debt. The mortgagor usually joined in the conveyance to evidence that he had notice of the transfer; the equity of redemption, of course, remained with him. The new method of transfer of a mortgage is by execution of a deed declaring that the mortgagee transfers the benefit of the mortgage.

By the Law of Property Act, 1925, Section 114—

"(1) A deed executed by a mortgagee

purporting to transfer his mortgage or the benefit thereof shall, unless a contrary intention is therein expressed, and subject to any provisions therein contained, operate to transfer to the transferee—

"(*a*) the right to demand, sue for, recover and give receipts for, the mortgage money or the unpaid part thereof, and the interest then due, if any, and thenceforth to become due thereon; and

"(*b*) the benefit of all securities for the same, and the benefit of and the right to sue on all covenants with the mortgagee, and the right to exercise all powers of the mortgagee; and

"(*c*) all the estate and interest in the mortgaged property then vested in the mortgagee subject to redemption or cesser, but as to such estate and interest subject to the right of redemption then subsisting."

If the mortgagor does not join in the transfer, the transferee should ascertain from the mortgagor, in writing, what is actually due under the mortgage. Until the mortgagor has received notice of the transfer, he is entitled to make payments to the mortgagee, of either principal or interest, and to have credit for them as against the transferee; but when the mortgagor is a party to the transfer, he enters into a covenant with the transferee for payment of the mortgage debt and interest.

For the statutory form of transfer of mortgage as given in the third schedule to the Law of Property Act, 1925, see under STATUTORY MORTGAGE.

An alternative method of transfer is available, namely where a statutory receipt is executed for the moneys due under the mortgage, and it expresses the money as having been paid by someone not immediately entitled to the equity of redemption, i.e. by someone other than the original mortgagor or his transferee, the receipt will operate as a transfer by deed of the benefit of the mortgage to him, unless it is expressly provided otherwise, or the mortgage is discharged out of money in the hands of a personal representative or trustee. (Section 115 (2) Law of Property Act, 1925.)

Where a banker takes a transfer of a mortgage (as is exceptionally done when taking over an advance from another bank, instead of getting a fresh charge executed), the advance so transferred must be taken by way of loan on which all reductions are permanent. Otherwise, by the operation of the Rule in *Clayton's* case, all credits to the account will reduce the amount covered by the mortgage and all debits will be in the nature of fresh advances not covered by the mortgage security. A transfer of mortgage, whereby the transferor absolutely makes over his interest to a third party, must not be confused with a sub-mortgage, where a mortgagee mortgages his interest but has the right to pay off the sub-mortgage and resume his former rights in the mortgage. (See MORTGAGE, SUB-MORTGAGE.)

TRANSFER OF SECURITIES (PUBLIC TRUSTEE). In addition to the information given under PUBLIC TRUSTEE (*q.v.*) regarding the powers and duties of the Public Trustee, bankers should note the somewhat peculiar practice of the Department in connection with the transfer of securities.

By Rule 21 of the Statutory Rules and Orders, 1912—

"(1) No transfer by the Public Trustee of any securities or assurance by him of any land forming part of the trust property shall be made except under the hand and official seal of the Public Trustee, or under the hand and seal of an officer of the Public Trustee authorised in writing by him to act in that behalf either generally or in any particular case.

"(2) Any such transfer or assurance by an officer so authorised shall have the same effect as if the same were made by the Public Trustee under his hand and official seal."

Sales and purchases of investments are made only upon the written order of the Public Trustee.

Where registered stocks are to be transferred to the Public Trustee, the deed of transfer is signed by the Public Trustee. If there are several accounts in his name, each account is earmarked by a name, a letter, a figure, or a combination thereof. The earmarking is added to the deed of transfer in the Department of the Public Trustee. The object of the earmark is to enable the Public Trustee to identify each holding with the particular trust to which it belongs, and in order that dividends may be paid direct to the beneficiaries or their

banking accounts. In the case of a joint account in the names of the Public Trustee and another person, no earmarking is necessary as the additional name is sufficient identification, but if there are two or more joint accounts in the same names it is requisite to earmark them.

Banks and other companies recognise this practice, and make out separate dividend warrants for each account.

When a sale or transfer of registered stock takes place, the deed of transfer is executed by the Public Trustee. Upon a purchase, payment is made by the Public Trustee only when a duly certified transfer, or an executed transfer with the relative certificate attached, is delivered at the Securities Department of the Public Trustee Office or at a bank, as may be arranged.

In connection with the purchase or sale of bearer securities the Public Trustee may, upon a sale, request a banker to surrender such securities against payment of the proceeds, and, upon a purchase, may request him to make payment therefor upon delivery of the securities.

TRANSFER OF SHARES. The instrument of transfer of shares should be in accordance with the company's regulations. In companies formed under the Companies Clauses Consolidation Act, 1845, the transfer must be by deed; in other companies the transfer may be under hand or under seal, according to the articles of the company. In practice, however, the tendency is for the common form of transfer deed to be used, irrespective of the company's articles, except in those cases where a special form of transfer is necessary. The common form of transfer requires execution under hand; nevertheless, transfers in the common form are usually sealed. In order to obtain an official quotation on the London Stock Exchange, one of the conditions is that the articles must stipulate that the common form of transfer shall be used.

The usual form of transfer under seal is given in the next column.

Table A of the Companies Act, 1948, provides—

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

Certificate for £ stock has been lodged at the company's office. Date.

For The Company, Ltd

I in consideration of the sum of paid by hereinafter called the said transferee, do hereby bargain, sell, assign and transfer to the said transferee of and in the undertaking called To hold unto the said transferee executors, administrators, and assigns, subject to the several conditions on which held the same immediately before the execution hereof; and the said transferee do hereby agree to accept and take the said subject to the conditions aforesaid. As witness our hands and seals this day of in the year of our Lord one thousand nine hundred and .

Signed, sealed, and delivered by the above-named in the presence of

Witness's Signature

Address

Occupation

L.S.

Signed, sealed, and delivered by the above-named in the presence of

Witness's Signature

Address

Occupation

L.S.

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."

Shares should not be registered in the name of a minor, as he may subsequently repudiate the contract.

Certain banks and insurance companies require a special form of transfer to be used; in some cases the forms must be filled up only by the officials of the companies, and in other cases the forms are supplied by the companies for use by those who require them. There are special provisions with regard to the sale and transfer of bank shares. (See LEEMAN'S ACT.)

The consideration money set forth in a transfer may differ from that which the first seller will receive, owing to sub-sales by the original buyer. The amount which is entered in the transfer is the price given by the last purchaser.

When a transfer is executed out of Great Britain the signature should be attested by H.M. Consul, or Vice-Consul, a Clergyman, Magistrate, Notary Public, or by some other person holding a public position, as most companies refuse to recognise signatures not so attested. When a witness is a female, she must state whether she is a spinster, wife, or widow; and if a wife she must give her husband's name, address and quality, profession or occupation. The date must be inserted in words and not in figures.

Contractions should not be made in a transfer, and the full names, addresses and occupations of all the parties should be given.

The instrument of transfer must be executed both by the transferor and transferee. When the document has been signed by the transferor he hands it, with the certificate, against payment of the purchase money, to the transferee, who also signs it and then sends the transfer and the certificate to the company's office along with the company's fee for registration in order that the shares may be registered in his name. The process is usually carried through by a broker. When a transfer is received for registration it must be carefully scrutinised and the particulars of the shares should be compared with the share register. If the instrument is correctly stamped and properly filled up and executed, the company will, before issuing a new certificate, send a notice to the transferor advising him that a document of transfer purporting to be signed by him has been received and that the shares will, unless he replies by return (or within, say, three days) to the contrary, be registered in the name of the transferee. If there are two or more joint holders of the shares it is advisable to send a notification to each one. Such a notice helps to prevent a company registering a transferee upon a forged transfer. A company must, within two months after the registration of a transfer, have the new certificate ready for delivery. (See Section 80 of the Companies Act, 1948.)

When transfers have been passed by the directors and new certificates issued, they should be filed away in such a manner that any one may be found at a moment's notice if required. A good plan is to number each one and to place the same number in the register of members opposite the name of the transferor.

In the case of shares which are not fully paid, the directors of a company should consider whether a proposed transferee is good for the liability upon the shares; that is, if the articles give the directors power to refuse to register an unsatisfactory person. If the articles do not give such power the directors cannot refuse to register a transfer.

In *Re Pool Shipping Co., Ltd.* (1919), 122 L.T. 338, where the articles of association gave the directors power to refuse any transfer of shares of which they might not approve, it was held that a renunciation of rights to new shares was not a transfer of shares within the meaning of the articles and that the directors were not entitled to refuse to register the person in whose favour the rights to certain shares had been renounced.

Shares are very frequently transferred into a banker's name, or the names of his nominees, or the name of a nominee company, as security for a loan or overdraft. It is to be noted that the person in whose name shares are registered may be merely a trustee, or a nominee of the true owner; and that, if the registered holder obtains a loan against a deposit of the certificate, the true owner may intervene at any time before the banker has registered the shares and compel the banker to surrender the certificate. When a banker, however, without notice of any prior equitable charge, obtains a transfer duly executed and gets it registered, he has a legal title to the shares or stock transferred by the instrument. When the banker is registered as the owner of shares which are not fully paid he becomes liable for any calls that may be made, which is not the case if he merely holds the certificate with a blank transfer, or does not register a completed transfer. Though registration is necessary to give a banker a legal title, he will, as a rule, be quite safe if he holds the certificate and a duly executed transfer, and gives notice to the company.

When giving notice, the banker should ask the company to state whether notice of any prior charge has been received. The company may probably not accept notice, or even acknowledge receipt of the letter sending it, and it is, therefore, advisable for a banker to be able to prove that the notice was sent to the company. The company should be advised when the banker ceases to have a lien on the shares.

A limited company is under no obligation to accept notice, as by the Companies Act, 1948, Section 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." When notice is given it does not, therefore, perfect an equitable title or secure priority over a security of prior date of which no notice was given to the company.

But where a company has a lien upon its shares for all debts due from the holder thereof (see the case of *Bradford Banking Co.* v. *Briggs & Co.*, under LIEN), the company is affected by notice of an equitable interest. In that case it was held that the notice was not notice of a trust as defined in Section 117, but affected the company in their capacity as traders to the extent of the interest of the bank, and that the company could not, in respect of moneys which became due from the shareholder to the company after receipt of the notice, claim priority over advances by the bank made after such notice.

Under the rules of the London Stock Exchange, one of the conditions precedent to application for an official quotation is that fully paid shares shall be free from all lien.

With regard to a "notice in lieu of distringas" served upon a company, see DISTRINGAS.

Before registering shares in the bank's name, or the names of its nominees, a banker naturally ascertains if there is any liability upon the shares. The certificate, however, does not always show how much has been paid up per share, and the information must be obtained from other sources. If shares are only partly paid up, they should not be registered in the bank's name; the certificates should merely be held with a blank or a completed transfer. (See BLANK TRANSFER.) The registered holder of partly paid up shares is, as stated above, liable for any calls that are made. (See CALLS.)

The transfer can be sent in to the company at any subsequent date for registration, but it is doubtful if it will hold good if the transferor dies or becomes bankrupt before registration is effected. It should be noted that, though a surrender of the share certificate is necessary in nearly all cases, there are a few instances where a surrender is not necessary before a transfer can be effected. Certificates need not be produced when transferring National Bank shares, Provincial Bank of Ireland shares, and Royal Exchange Assurance Corporation stock.

Although a banker can, when the shares are registered in his name and he holds an authority to sell them, dispose of them, when necessary, without further reference to the transferor, it is customary to give the transferor notice of an intention to sell. If the banker does not hold (and cannot obtain) a transfer of the shares, to enforce the security, application must be made to the Court for an order for foreclosure or sale.

The various ways in which shares can be made available as security are—

1. A simple deposit of the certificate, with or without notice to the company.
2. A deposit of the certificate, accompanied by a memorandum of deposit, with or without notice to the company.
3. A deposit of the certificate with a blank transfer and memorandum of deposit, with or without notice to the company.
4. A deposit of the certificate with a completed transfer and memorandum of deposit, with or without notice to the company.
5. Registration of the shares in the name of a nominee company, or the names of nominees. A memorandum of deposit should be held.

Nos. 1, 2, and 3 are merely equitable charges, and may be postponed to a prior equitable charge.

No. 4 is only an equitable security, but the legal estate can be obtained at any moment by sending in the transfer for registration.

No. 5 is, of course, the best form in which to take the security.

Although shares may be registered in the names of a bank's nominees, and those nominees be regarded by the company as the actual owners of the shares and the persons to whom dividends will be paid and who will be held liable for any calls which are made, it is, of course, understood between the customer and the bank that the transfer has been effected merely for the purposes of security and that, as soon as the necessity for the security ceases, the shares will be retransferred to the customer. To make the position clear a memorandum or agreement is signed by the customer on the same date as the transfer is signed, qualifying the deed of transfer and stating that the shares are transferred to the bank as security for all moneys owing and that the bank may, when necessary, realise the shares for the purpose of repaying any advance. (See MEMORANDUM OF DEPOSIT.) All dividends received by the bank on such shares belong, of course, to the customer and will be credited to his account. A record should be kept of all stocks and shares registered in the names of the bank's nominees, so that, when the dividends are received, the banker may know to whom they belong, and that, when notices are received from the companies with respect to an issue of new shares or anything likely to affect the interests of the shareholders, the notices may be forwarded at once to the customers.

When the security is no longer required the shares are retransferred to the persons entitled to them. The shares thus retransferred do not always bear the individual numbers of the shares originally deposited with the bank, and it should be noted that in the Scottish case of *Crerar* v. *Bank of Scotland* (June, 1921), where a customer claimed to have the identical shares which had been originally deposited retransferred to her, the Court of Session held that the bank was bound to identify the shares deposited by particular customers, unless the customers acquiesced in the course followed by the bank, that is to retransfer the shares without regard to the original numbers.

Where shares are transferred to a nominee company or the nominees of a bank as security for a loan or overdraft, the consideration which is inserted in the document of transfer is generally five shillings or ten shillings. Such a consideration is called a "nominal consideration," and the transfer requires to be impressed with a ten-shilling stamp. (See NOMINAL CONSIDERATION.) The transferor's signature should be witnessed by a bank official, but not by one of the nominees. (See FORGED TRANSFER.)

It is important to note that if a transfer taken by a banker as security should eventually be proved to be forged, the banker may, even though the shares were transferred into his name and sold, be compelled to make good the value of the shares to the true owner. Transfers should therefore, when possible, be signed in the presence of an official of the bank, and particularly if the shares are in the names of several persons. (See FORGED TRANSFER.) Where a banker's name is inserted in a transfer as the transferee, the banker should not sign as witness to the transferor's signature.

It frequently happens that part of the shares included in a transfer which is held by a banker is sold by the customer. In such cases a fresh transfer should be taken for the shares which still remain as security. It is not sufficient to alter and initial the old transfer. A fresh transfer should also be taken, e.g. where shares are split into smaller denominations than quoted in the transfer; and where a further instalment is paid on partly paid shares if the amount paid up is quoted in the transfer.

Where a company is being wound up voluntarily, every transfer of shares, made after the commencement of the winding up,

except transfers made with the sanction of the liquidator, shall be void; and in the case of a winding up by the Court, every such transfer shall, unless the Court otherwise orders, be void. (Sections 282 and 227, Companies Act, 1948.)

A stockbroker often gives a banker security over shares which have been given to him by a client as security. (See BLANK TRANSFER, STAMP DUTY, STOCKBROKER'S LOANS.)

The stamps upon transfers must be impressed.

The following scale of duties applies to transfers of stocks and shares, save inscribed Canadian Government stock and stocks to which the Colonial Stock Act applies—

Any Stock, Shares or Marketable Securities where the amount or value of the consideration for the sale does not	£	s.	d.
exceed £5	0	2	0
Exceeds £5 and does not exceed £10	0	4	0
" £10 " " £15	0	6	0
" £15 " " £20	0	8	0
" £20 " " £25	0	10	0
" £25 " " £50	1	0	0
" £50 " " £75	1	10	0
" £75 " " £100	2	0	0
" £100 " " £125	2	10	0
" £125 " " £150	3	0	0
" £150 " " £175	3	10	0
" £175 " " £200	4	0	0
" £200 " " £225	4	10	0
" £225 " " £250	5	0	0
" £250 " " £275	5	10	0
" £275 " " £300	6	0	0
£300—for every £50 and also for any fractional part of £50	1	0	0

Where the transfer is effected merely as security, with a nominal consideration of, say, five shillings, the deed of transfer takes a stamp of ten shillings (see NOMINAL CONSIDERATION), and the agreement under hand, which usually accompanies it, takes a stamp of sixpence. (See Section 23 (2), Stamp Act, 1891, under AGREEMENT.) This latter stamp may be either impressed or adhesive. If the agreement is under seal it is liable to *ad valorem* duty like a mortgage. (See Section 86 (1) (*d*), under MORTGAGE.)

A transfer must be stamped within thirty days after its execution, or within thirty days from the date of its arrival in the United Kingdom.

As to composition for stamp duty see COMPOSITION (TRANSFERS, SHARES).

With regard to the duty upon instruments of transfer of shares, stock and debentures, the following circular was issued by the Inland Revenue on 29th April, 1910—

"It has been brought to the notice of the Board of Inland Revenue on several occasions that instruments of transfer of shares, stock, and debentures, have been presented to be stamped with the fixed duty of 10s., although upon inquiry they were found to be properly liable to the *ad valorem* duty.

"The Board believe that, in the majority of these cases, the mistake has been due to a misapprehension of the requirements of the law. They accordingly desire to make the provisions of the law which affect this matter more generally known, in order to protect those who are responsible for seeing that the transfers are properly stamped, more especially the registering officers of public companies and municipal corporations, from penalties which may be inadvertently incurred.

"Instruments of transfer are properly stamped with the fixed duty of 10s. when the transaction falls within one of the following descriptions—

(*a*) Vesting the property in trustees on the appointment of a new trustee, or the retirement of a trustee.

(*b*) A transfer, as for a nominal consideration, to a mere nominee of the transferor where no beneficial interest in the property passes.

(*c*) A transfer by way of security for a loan; or a retransfer to the original transferor on repayment of a loan.

(*d*) A transfer to a residuary legatee of stock, etc., which forms part of the residue divisible under a will.

(*e*) A transfer to a beneficiary under a will of a *specific legacy* of stock, etc.

(*f*) A transfer of stock, etc., being the property of a person dying intestate, to the party or parties entitled to it.

"In cases (*b*) and (*c*) a certificate setting forth the facts of the transaction, signed by both the transferor and the transferee, should be required.

"As errors are believed to occur, especially in cases of transfers made in distributing the estate of a deceased person, the Board wish to point out that the fixed duty does not apply to transfers made for this purpose except when they fall within one of the descriptions (*d*), (*e*) and (*f*), mentioned above. It follows, therefore, that any transfer of stock, etc., which is made by the executors of a will in discharge, or partial discharge, *of a pecuniary legacy*, is chargeable with *ad valorem* duty at the rate of 10s. (now £2) per cent on the amount of the legacy, or of such part of it as is discharged by the transfer, and this amount should be set forth in the instrument as the consideration for the transfer.

"Similarly if a transfer is made on a sale, or in liquidation of a debt, or in exchange for other securities, *ad valorem* duty is payable on the value or agreed value of the consideration.

"Under the provisions of the Finance (1909–10) Act, 1910, a transfer of any shares, stock or marketable security by way of gift *inter vivos* is chargeable with *ad valorem* stamp duty at the same rate as if it were a transfer on sale, with the substitution of the value of the stock or security for the consideration. The transfer must be adjudicated.

"Transfers to or from trustees otherwise than for effectuating the appointment of a new trustee or the retirement of a trustee should be required to be adjudicated.

"Section 17 of the Stamp Act, 1891, imposes on all registering officers the duty of satisfying themselves that all instruments of transfer are adequately stamped before they admit them to registration. The Board are well aware that it is not always easy for a registering officer to determine the particular circumstances under which any such instrument which may come before him has been made, but their experience goes to show that it is generally possible to ascertain by inquiry the actual facts of the case, and they desire to urge upon all registering officers, who may have to deal with instruments purporting to be properly stamped with the fixed duty of 10s., the necessity of satisfying themselves that the provisions of the law have been complied with in each case, before they admit the instrument to registration.

"In any case where a registering officer has reasonable doubt whether an instrument is duly stamped, and the parties decline to give the information necessary to enable him to satisfy himself on this point, and in all cases of transfers by way of gift *inter vivos*, he should refuse to register the transfer, unless the instrument bears the Board's Adjudication Stamp. In order to obtain that stamp the parties interested must present the instrument at the office of the Solicitor, London, or Edinburgh, as the case may be, where all needful information can be obtained."

On 17th June, 1910, a further circular was issued by the Inland Revenue, as follows—

"With reference to the circular to secretaries of Public Companies dated 29 April last, the attention of the Board of Inland Revenue has been called to the fact that difficulty is sometimes experienced in obtaining, in the cases (*b*) and (*c*) mentioned in the circular, a certificate of the facts of the transaction signed by the transferor and transferee. The Board, therefore, desire to intimate to secretaries and other registering officers that while they consider that, as a general rule. the best form of evidence of the correctness of the fixed duty of 10s. borne by a transfer in such cases will be found to be a certificate signed by both the transferor and transferee, they have no objection to the receipt of other evidence, provided it shows, clearly and satisfactorily, the nature of the transaction. Where, for instance, the transferee is a well-known bank and the required certificate is given by an accredited representative of the bank, the Board would accept such a certificate without requiring the instrument to be adjudicated. A similar case is one in which a satisfactory certificate is given by a member of a stock exchange acting for one or other of the parties to the transfer.

"In any case, however, in which the registration officer is not satisfied that the transfer is duly stamped with the fixed duty of 10s., he should not hesitate to refer the parties to the Board."

On 5th September, 1910, another circular was issued by the authorities at Somerset House as follows—

"With reference to the circular to secretaries of public companies, dated the 29th April, and the 17th June last, I am directed by the Board of Inland Revenue to inform you that it has been represented to them that, with very few exceptions, transfers for nominal consideration to or from banks or their nominees clearly fall within classes excepted from the provisions of Section 74 of the Finance (1909–10) Act, 1910, imposing *ad valorem* duty, and that it is not necessary or desirable that representatives of banks, in furnishing certificates in regard to the stamp duty, should specify the facts of each particular transaction.

"In all the circumstances the Board are of opinion that, in the case of transfers of this nature executed by a well-known bank or its official nominees, the interests of the Revenue would, as a general rule, be adequately protected if registering officers were furnished with a certificate by an accredited representative of the bank to the effect that the transfer is excepted from Section 74 of the Finance (1909–10) Act, 1910, and is duly stamped.

"It is to be understood that this modification of the Board's previous circulars applies only to the case of banks, and that

in other cases the requirements of those circulars should continue to be observed."

A further modification of the above circulars was issued by the Board of Inland Revenue in February, 1911—

"I am directed by the Board of Inland Revenue to inform you that they will offer no objection if Registering Officers think fit to register transfers of stock or marketable securities which admittedly operate as voluntary dispositions *inter vivos*, and which are stamped with *ad valorem* duty upon the market value of the stock or securities at the date of the instrument, without insisting upon adjudication. As the Registering Officer will be in a position to supply authoritative information as to the value of the stock or securities, it will be open to him to obtain the adjudication stamp at any time if necessity should arise in any particular case of this description, e.g. if the transfer should be required for production in evidence in a Court of Law.

"The Board have received representations to the effect that Registering Officers should not be under any obligation to inquire into the sufficiency of the stamp on a transfer for nominal consideration which has been passed by an Official Deed Marking Officer for stamping with the fixed duty of 10s. after execution. With a view to meeting this suggestion as far as practicable, the Board have issued instructions that if a written explanation of the facts is produced to a Marking Officer and accepted as justifying him in passing an executed transfer for stamping with 10s., he shall mark the explanation with the words "Transfer passed for 10s." his initials, and his Office stamp, and return it to the person presenting the transfer in order that it may be available for production to the Registering Officer. The explanation will be required to contain sufficient particulars to identify it with the transfer to which it relates. An official form (No. 19) will be provided for use in such cases if desired.

"Where a transfer for nominal consideration stamped with 10s. is produced to a Registering Officer accompanied by a written explanation thus certified by a Marking Officer, the Board will not hold the Registering Officer liable to any penalty under Section 17 of the Stamp Act, 1891, if he accepts the transfer for registration without questioning the sufficiency of the stamp. The explanation should be retained by the Registering Officer.

"It should be understood that this certification by a Marking Officer is not equivalent to adjudication, and that it is possible that cases may arise in which the Registering Officer, in consequence of special information in his possession or for some other good reason, may feel it incumbent upon him to require that the transfer be formally presented for adjudication in accordance with the provisions of Section 12 of the Stamp Act, 1891."

(See BLANK TRANSFER, CERTIFICATE, COMPANIES, LEEMAN'S ACT, SHARES, TRANSMISSION OF SHARES.)

TRANSFER ORDER. When a bank holds a warehousekeeper's certificate or receipt (*q.v.*) in its own name, the bank signs, when necessary, an order addressed to the warehousekeeper to transfer the goods into the customer's name. If delivery of the goods is required, a delivery order must be signed. (See DELIVERY ORDER.)

TRANSFER RECEIPT. The receipt which is usually given by the Secretary of a company when a document of transfer is presented for registration.

TRANSFER REGISTER. A transfer register contains particulars of all the transfers of a company's shares which are agreed to by the directors. The register is usually ruled so as to show the date of registration, the transferor's name and address, the number of shares transferred and the distinctive numbers, the number of the old certificate and the folio of the register of members where the transferor's name appears, the name, address and description of the transferee, the number of the new certificate, and the folio of the share register where the transferee's account is to be found.

It is customary to close the transfer books for a number of days prior to the general meeting. On the printed report and balance sheet of a bank there is usually, along with the announcement of the date of the general meeting, a notice to the effect that the transfer books will be closed for days, beginning on and ending with the day of the meeting.

TRANSFEROR BY DELIVERY. A transferor by delivery is defined by the Bills of Exchange Act, Section 58, as follows—

"(1) Where the holder of a bill payable to bearer negotiates it by delivery without indorsing it, he is called a 'transferor by delivery.'

"(2) A transferor by delivery is not liable on the instrument.

"(3) A transferor by delivery who negotiates a bill thereby warrants to his

immediate transferee being a holder for value that the bill is what it purports to be, that he has a right to transfer it, and that at the time of transfer he is not aware of any fact which renders it valueless." (See BEARER, BILL OF EXCHANGE, NEGOTIATION OF BILL OF EXCHANGE.)

A transferor by delivery does not warrant that the instrument will be paid and in fact is not liable to a transferee if the bill is dishonoured for want of funds, etc. If, however, it transpires that there is a forgery on the bill, the transferor by delivery is liable for breach of warranty.

TRANSMISSION OF SHARES. When a shareholder dies, the right to deal with the shares passes to the executors or administrators, who produce to the company for registration the probate of the will or the letters of administration. The date of the shareholder's death should be entered in the register with a note of the executors' or administrators' names and addresses. The probate or letters of administration should be indorsed with a note that they have been exhibited to the company.

Unless the executors or administrators request to be registered as the actual holders of the shares, they will not be liable personally for any calls which may be made. If their names are entered in the register of shareholders merely as the executors or administrators of the deceased, the estate remains liable for calls. Some companies, however, do not permit shares to stand in the names of executors or administrators. When shares are specifically left by will it is nevertheless necessary for a transfer to be executed from the executors to the legatee.

When shares in a bank are transferred into the names of the personal representatives of a deceased under such circumstances as to constitute notice to the bank that the shares are held in a fiduciary capacity, the bank could not exercise its lien on the shares in order to recover money lent to the representatives for purposes not authorised by the trust. See under LIEN.

When shares are transferred by the representatives to a person to whom the shares have been left, the consideration in the transfer is merely a nominal one, say, five shillings. The stamp duty on such a transfer is ten shillings. But if they are transferred to a legatee, who agrees to accept them instead of his cash legacy, the stamp duty is *ad valorem* and the consideration will be the price agreed upon between the representatives and the legatee.

Where a company has power to refuse to register an unsuitable person as a shareholder, it cannot avoid registering a legatee to whom shares may have been specifically bequeathed by a deceased shareholder, even if that legatee is considered quite unreliable for the liability upon the shares, unless the company's articles of association give the directors express power to decline to register any such person becoming entitled to shares in consequence of the death of a member.

By Article 24 of Table A, directors may decline to register any transfer of shares, not being fully-paid shares, to a person of whom they do not approve. This Clause does not apply to a person claiming shares by transmission, but Article 30 (see below) extends the directors' right to decline registration to a person entitled to shares by transmission.

In companies where Table A applies (see Section 8 under ARTICLES OF ASSOCIATION) the regulations are—

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 shares until the requirements of the notice have been complied with."

Where a shareholder is domiciled abroad, probate or letters of administration should be obtained in England. But where a Court of Probate in a British possession, to which the Colonial Probates Act, 1892, applies, has granted probate or letters of administration, they may, as provided by Section 2 of that Act, be produced to a Court of Probate in the United Kingdom to be sealed with the seal of the Court, and thereupon they shall have the like force and effect as if granted by the Court. (See COMPANIES, EXECUTOR, SHARES, TRANSFER OF SHARES.)

TRAVELLERS' CHEQUES. A form of travel currency giving the holder the security of a letter of credit and the convenience of a local currency.

Travellers' cheques have for the most part ousted circular notes as a popular form of credit instrument for travel.

In this country they are usually issued in denominations of £2, £5, and £10, and are encashable at the correspondents—at home or abroad—of the issuing bank. In practice, they are usually acceptable in payment of accounts on board ship, at hotels, and stores.

They are in a form whereby the beneficiary signs as drawer of a draft on the head office of the issuing bank. They should be so signed immediately on issue and, instead of a letter of indication, a place is provided on the cheque for the signature of the beneficiary on its presentation for encashment at the correspondent bank, but not before. This provides a method of identification of the beneficiary.

Travellers' cheques are usually paid for on issue and they attract stamp duty of twopence as on an ordinary cheque.

It is a condition of issue that in the case of loss or theft the liability must be borne by the beneficiary. The issuing bank cannot take the responsibility of advising all its correspondents of loss or theft.

Travellers' cheques can also be issued in currency.

TRAVELLERS' LETTER OF CREDIT. (See CIRCULAR LETTER OF CREDIT.)

TREASURE TROVE. Where money, plate, or bullion is found hidden in the earth or other private place and the owner is unknown, it is termed "treasure trove" and passes into the possession of the Crown.

If similar property is found on the surface of the ground, it is not treasure trove, and the finder has a title to it against the whole world except the true owner.

TREASURY BILLS. These bills are issued by the Treasury under 40 Vict. c. 2 for money borrowed by the Government and form part of the floating debt of the country. They have been issued in the past at three, six, nine, or twelve months from the date of the bills, but since the resumption in 1921 of the system of tendering for Treasury Bills, only bills of three months' currency have been issued.* By Section 5 the principal money of any Treasury Bill shall be charged on and payable out of the Consolidated Fund of the United Kingdom. Section 8 says with respect to the issue of Treasury Bills the following provisions shall have effect: (1) Treasury Bills shall be issued by the Bank of England under the authority of a warrant from the Treasury, countersigned by the Comptroller and Auditor-General of the receipt and issue of His Majesty's Exchequer; (2) each Treasury Bill shall be for the amount directed by the Treasury.

By Section 13 the Bank of England may lend to His Majesty upon the credit of Treasury Bills, any sum or sums not exceeding in the whole the principal sums named in such bills. The first issue of Treasury Bills was in 1877, the date of the above Act. Treasury Bills are also issued under various subsequent Acts.

* As from 22nd April, 1950, Treasury Bills have a currency of 91 days.

The following is a specimen of a Treasury Bill—

Due 18*th March*, 19 .

Treasury Bill.

Per Acts 40 Vict. c. 2 & 52 Vict. c. 6. B 001706

£5,000. London, 18*th Dec.*, 19 .

THIS TREASURY BILL entitles* or order to payment of FIVE THOUSAND POUNDS at the Bank of England out of the Consolidated Fund of the United Kingdom on the 18th day of March, 19 .

Secretary to His Majesty's Treasury.

In a letter to the *Economist*, November, 1909, Lord Welby explained that Treasury Bills were invented by Mr. Walter Bagehot in 1877. The Chancellor of the Exchequer wished to provide certain funds by an increase of the floating debt. Mr. Bagehot's advice was asked, and he replied: "The English Treasury has the finest credit in the world, and it must learn to use it to the best advantage. A security resembling as nearly as possible a commercial bill of exchange—that is, a bill issued under discount, and falling due at certain intervals—would probably be received with favour by the money market, and would command good terms." His advice was acted upon, and the bills have continued in favour ever since.

When the Government requires to borrow upon Treasury Bills an announcement for tenders appears in the *Gazette* and forms of tender may be obtained from the Bank of England. As the bills do not carry interest, they are tendered for at a discount. Tenders are received at the Bank of England each Friday for bills to be issued during the following week, the day for payment being at the option of the party tendering. Tenders are now submitted by the Discount Market as a syndicate. No tender may be for a lesser amount than £50,000, but a proportion only of the tender may be allotted. The bills are issued in denominations of £5,000, £10,000, £25,000, £50,000, and £100,000. Treasury Bills take no days of grace.

Treasury Bills are also issued "on tap" at the Bank of England, but only to the various Public Departments.

The following is a notice in the *London Gazette* for 29th July, 1949, inviting tenders for Treasury Bills—

TENDERS FOR TREASURY BILLS

1. The Lords Commissioners of His Majesty's Treasury hereby give notice that Tenders will be received at the Chief Cashier's Office, at the Bank of England on Friday, the 5th August, 1949, at 1 p.m. for Treasury Bills to be issued under the Treasury Bills Act, 1877, the National Debt Act, 1889, and the National Loans Act, 1939, to the amount of £200,000,000.

2. The Bills will be in amounts of £5,000, £10,000, £25,000, £50,000, or £100,000. They will be dated at the option of the tenderer on any business day from Monday, the 8th August, 1949, to Saturday, the 13th August, 1949, inclusive, and will be payable at three months after date.

3. The Bills will be issued and paid at the Bank of England.

4. Each Tender must be for an amount not less than £50,000 and must specify the date on which the Bills required are to be dated, and the net amount per cent (being an even multiple of one penny) which will be given for the amount applied for. Separate Tenders must be lodged for Bills of different dates.

5. Tenders must be made through a London Banker, Discount House, or Broker.

6. The persons whose Tenders are accepted will be informed of the same not later than the following day, and payment in full of the amounts of the accepted Tenders must be made to the Bank of England by means of cash or a Banker's Draft on the Bank of England not later than 1.30 p.m. (Saturday, 12 noon) on the day on which the relative Bills are to be dated.

7. Members of the House of Commons are not precluded from tendering for these Bills.

8. Tenders must be made on the printed forms, which may be obtained from the Chief Cashier's Office, Bank of England.

9. The Lords Commissioners of His Majesty's Treasury reserve the right of rejecting any Tenders.

TREASURY CHAMBERS.

29*th July*, 1949.

TREASURY DEPOSIT RECEIPTS. Receipts issued to certain banks by the Bank of England in respect of short-term loans made to the Government, under special arrangements introduced in 1940. The receipt acknowledges the deposit with the Bank of England of a stated sum (in multiples of £500,000) for account of H.M. Treasury. It states the date of repayment—154, 182, or 210 days from the date of deposit—and the rate of interest.

In June, 1940, the Government decided that in view of the existing volume of Treasury Bills and of the uneven spread of the receipt of revenue, it was desirable to arrange additional facilities to cover the weekly war-enhanced needs of the Treasury. Accordingly it was agreed that the London Clearing Banks and the Scottish Banks would week by week make short-period loans to the Government in the form of deposits repayable in six months and bearing interest at a rate to be fixed from time to time. Initially, the rate was 1⅛ per cent, but on 22nd October, 1945, it was reduced to ⅜ per cent. The total amount required in any week is decided by the Government,

* If this blank be not filled in, the Bill will be paid to Bearer.

and the banks concerned make the necessary arrangements to provide the required sum, apportioning it among themselves. The security provided by the Government takes the form of a Treasury Deposit Receipt. Unlike Treasury Bills, the use of which previously had been the principal method of financing Government short-period requirements, Treasury Deposit Receipts are non-negotiable. They are not repayable before their due date, except (*a*) to provide for subscriptions to any public Government issues (other than Treasury Bills), or (*b*) to cover any emergency needs. Repayment for the latter purpose can be obtained only under discount at Bank Rate, and is therefore a costly procedure.

Under these arrangements the Government is able to obtain the short-term funds it requires by means of a longer term security than had previously been used, and to employ for this purpose part of the war-time inflated balances held by the public with the banks.

The growth of Government expenditure during the war years resulted in a large increase in the amount of the Floating Debt. The following figures show the part played by banks' loans against Treasury Deposit Receipts, in the finance of this increase—

	Floating Debt £ Millions	
	1st June, 1940	23rd July, 1949
Treasury Bills	1,497·5	4,491·3
Ways and Means Advances	50·4	338·8
Treasury Deposit Receipts	—	1,258·5
Total	£1,547·9	£6,088·6

There has been a corresponding influence on the composition of the assets of the banks concerned. The returns as at 30th June, 1949, for the London Clearing Banks showed that their aggregate holdings of Treasury Deposit Receipts amounted to 19·4 per cent of their total deposits. Treasury Deposit Receipts are not now issued by the Government.

TREASURY NOTES. On the outbreak of war with Germany in 1914, the Treasury issued £1 and 10s. notes to act as legal tender for any amount. (See CURRENCY NOTES.)

Notes issued by the Treasury of the United States, where they are a legal tender.

TRIAL OF THE PYX. The Pyx (πυξις, a box) is a box in which are preserved samples of the coins made at the Mint. A jury of the Goldsmiths Company, who are summoned by the Lord Chancellor, test the coins annually (called the Trial of the Pyx) to see that the legal weight and fineness of the coins are maintained.

TRUST CORPORATION. Under the Law of Property Act, 1925, Trust Corporation means the Public Trustee or a corporation either appointed by the Court to be a trustee, or entitled by rules made under the Public Trustee Act, 1906, to act as custodian trustee. This includes a bank. (See under CUSTODIAN TRUSTEE.)

By the Law of Property Act, 1925, Section 27 (2), in a disposition on trust for sale of land or in the settlement of the net proceeds, the proceeds of sale or other capital money arising under the disposition shall not be paid to fewer than two persons as trustees of the disposition, except where the trustee is a trust corporation.

By the Law of Property (Amendment) Act, 1926, "trust corporation" includes, in relation to the property of a bankrupt and property subject to a deed of arrangement, the trustee in bankruptcy and the trustee under the deed respectively. (Section 3.)

TRUST DEED FOR DEBENTURES. The debentures themselves may create a charge upon the property of the company, or there may be a separate trust deed. When there is a trust deed the company's property, freehold and leasehold, is by it vested in the trustees on behalf of the debenture holders, and power is given therein to the trustees, upon the occurrence of certain events, to enter into possession and realise the property for their benefit. It is much more convenient for the debenture holders to have two or three trustees to protect their interests, than for the debenture holders themselves to do so.

Every debenture holder has the right (on certain payments) to a copy of any trust deed. (See DEBENTURE.)

A trust deed must be registered in the company's register of mortgages and particulars delivered to the registrar of companies. (See DEBENTURE; REGISTRATION OF CHARGES.)

TRUST INSTRUMENT. (See under SETTLED LAND.)

TRUST LETTER OR RECEIPT OR LETTER OF HYPOTHECATION. A document executed by the pledgor of goods or the documents of title thereto, when such are released to him by a banker, in order that the goods may be sold and the loan repaid, or that they may be warehoused or

reshipped. As the essence of a pledge is possession of the thing pledged, the release of documents of title by the banker would deprive him of his rights as pledgee and in the absence of provisions otherwise would deprive him of his security altogether. Professor Gutteridge in *Bankers' Commercial Credits*, says: "Viewed as a whole, the legal consequences of a letter of hypothecation may be defined as a bailment of the documents of title to the pledgor by the pledgee, coupled with an equitable assignment or charge by the pledgor of the proceeds of sale."

The usual form of letter of trust or hypothecation acknowledges receipt of the documents of title mentioned in the schedule, and that they are held by the customer as trustee for the banker. The customer further undertakes to deal with the goods as agent for the banker for the purpose of getting delivery of the goods and selling or warehousing them, and binds himself to pay over the proceeds of sale to the banker or to deliver to him the relative documents of title, such as dock warrants if, for example, bills of lading have been released under the trust letter. The customer also binds himself to effect any necessary insurance and to keep the transaction separate from others.

A purchaser of the goods or relative documents with notice of the trust created by such a document will be bound to pay the purchase price to the banker on demand, if it has not already been paid to the customer. But an innocent purchaser who pays the sale proceeds to the customer will not be liable to the banker if the customer has diverted such proceeds to his own ends. The precaution of indorsing the documents of title with notice of the trust is not practicable, and beyond confining trust releases to undoubted borrowers and closely watching for the proceeds of sale, there is no safeguard against a dishonest customer.

A banker is sometimes faced by a claim by third parties to sale proceeds in respect of goods subject to a trust letter. In *In re David Allester, Ltd.*, [1922] 2 Ch. 211, a liquidator of a company which had pledged bills of lading to a bank and later received them back under a trust letter for sale purposes, claimed that the bank's security was void through non-registration as "a charge created or evidenced by an instrument which, if executed by an individual, would require registration as a bill of sale." (*Vide* Companies Act, 1948, Section 95.) It was held that the letter of trust neither created nor evidenced the charge which was created by the pledge and that the pledge was prior to and quite distinct from the letter of trust. It was further held that if the Bills of Sale Act did apply, the trust letter did not require registration because it did not come within the definition of a bill of sale mentioned in Section 4 of the Bills of Sale Act, 1878.

A trust letter is not a charge on book debts. In the above case it was held "these letters of trust really create no mortgage or charge on book debts in any true sense of the word at all. The bank had its charge before these letters came into existence."

A trust letter takes the relative goods out of the operation of the reputed ownership clause in bankruptcy. (In *re Young Hamilton & Co.*, [1905] 2 K.B. 381.)

In *Lloyds Bank Ltd.* v. *Bank of America National Trust & Savings Association*, [1938] 2 All E.R. 63, a company pledged bills of lading to the plaintiff which were afterwards released under a trust letter. Instead of selling the goods and accounting to the plaintiffs for the proceeds, the company pledged the documents afresh to the defendants for other advances. The company failed and the plaintiffs claimed return of the documents of title in question. It was held and confirmed on appeal that the company were in possession of the goods with the consent of the owner under Section 2 (1) Factors Act, 1889, and hence free to deal with them. This is an example of the risks run with trust releases.

TRUSTEE. A trustee is the person to whom property is intrusted in order that he may deal with it in accordance with the directions given by the creator of the trust. The person for whose benefit a trust is created is called the *cestui que trust* (plural, *cestuis que trustent*).

A trustee must take as much care of the trust property as a reasonable business man would of his own property, and he must not make a profit out of the trust.

If customers (who are, in fact, trustees) open an account in their joint names and the banker has no notice or knowledge that they are trustees, the account may be treated as an ordinary joint account. But if John Brown and John Jones come to a banker with a request to open an account as "Trustees of R. Smith, J. Brown, J. Jones," and the banker recommends with the idea of avoiding notice of trust, that the account should be called, e.g. "John Brown and John Jones, S. account," the banker could

not maintain, in the event of any subsequent trouble, that he was unaware that it was a trust account. His position would be exactly the same as if the account had been opened with a direct reference to the trust. All trustees should operate on a trust account unless the trust instrument permits less than the full number to sign, or a trustee is going abroad for more than a month, when, by Section 25 of the Trustee Act, 1925, he may appoint an attorney. (See under POWER OF ATTORNEY.) Where it is expedient to depart from this rule it is customary to take an indemnity from the body of trustees and, in some cases, to arrange for copies of the account to be furnished periodically to the non-signing trustees. In *re Flower* (1884), 27 Ch.D. 592, Mr. Justice Kay said: "The very reason why more than one trustee is appointed is that they shall take care that the trust property or moneys shall not get into the hands of one of them alone, and that they shall take care that the trust property or moneys are always under the power or control of every one of them."

The credit balance of an account in the name of "John Brown in trust for J. Jones" (or any similar wording giving notice of a trust), could not be held by a banker as a set-off for an overdraft on John Brown's private account; neither could a banker successfully hold to an amount transferred wrongfully by John Brown from the trust account to satisfy any pressing demands of the banker for a reduction of John Brown's overdraft. A transaction of that nature would give such a plain indication of irregularity that no banker would be justified in accepting money from that source. But a banker could hold a balance on, say a No. 2 account as a set-off to the customer's overdrawn No. 1 account, even if the moneys in the No. 2 account should ultimately be proved to be trust moneys, so long as the banker had no knowledge of the fact.

If a trustee transfers an amount from the trust account to his own private account, and there is no benefit designed for the bank, the bank is not under any liability to ascertain that the trustee is entitled to make such transfer. But a banker must not be a party to a breach of trust. It has been held that if it is shown that a personal benefit to the banker is stipulated for, it will most readily establish the fact that the banker is in privity with the breach of trust. (*Gray* v. *Johnston* (1868), L.R. 3 H. L. 1.)

In *Ex parte Kingston* (1871), 6 Ch.D. 362, Lord Justice Mellish said: "We are not really doing any prejudice to bankers by establishing a rule that if an account is in plain terms headed in such a way that a banker cannot fail to know it to be a trust account, the balance standing to the credit of that account will, on the bankruptcy of the person who kept it, belong to the trust."

Where a trustee has mixed trust moneys with moneys in his private account, see under CLAYTON'S CASE.

Securities deposited by trustees must not be given up, except under the authority of all the trustees.

If bearer bonds are lodged by a customer as security for an overdraft, and it ultimately transpires that the bonds do not belong to the customer but to a trust, the banker's right to the security will not be affected, provided that when he took the bonds he was in complete ignorance that they belonged to a trust. If instead of a negotiable security, as bearer bonds, the customer deposited a certificate of shares registered in his own name, along with a memorandum of deposit or a blank transfer, and the shares are eventually proved to belong to a trust, the banker will not be able to retain the security. To avoid such an unfortunate position and to have a complete security a banker should, when taking certificates, have the stock or shares registered in his own name or the names of his nominees.

Where a customer has an overdrawn trust account he is personally liable, and any credit balance on his private account may, after reasonable notice, be set-off against the overdraft. (See SET-OFF.)

By the Trustee Act, 1925—

Power to Deposit Money in Bank.

Trustees may, pending the negotiation and preparation of any mortgage or charge, or during any other time while an investment is being sought for, pay any trust money into a bank to a deposit or other account, and all interest, if any, payable in respect thereof shall be applied as income. (Section 11 (1).)

Deposit of Documents for Safe Custody.

Trustees may deposit any documents held by them relating to the trust, or to the trust property, with any banker or banking company or any other company whose business includes the undertaking of the safe custody of documents, and any sum payable in respect of such deposit shall be paid out of

the income of the trust property. (Section 21.)

Bearer bonds held by a trustee must be deposited by him with a bank for safe custody and collection of income. (Section 7. See under TRUSTEE INVESTMENTS.)

Power of Trustees to Give Receipts.

The receipt in writing of a trustee for any money, securities, or other personal property shall be a sufficient discharge to the person paying, transferring, or delivering the same, and shall exonerate him from being answerable for any loss or misapplication thereof. (Section 14 (1).)

"(2) This Section does not, except where the trustee is a trust corporation, enable a sole trustee to give a valid receipt for—

"(*a*) the proceeds of sale or other capital money arising under a trust for sale of land; [as amended by the Law of Property (Amendment Act), 1926]

"(*b*) Capital money arising under the Settled Land Act, 1925." (See TRUST CORPORATION.)

Power to Employ Agents.

Trustees or personal representatives may, instead of acting personally, employ and pay an agent, whether a solicitor, banker, stockbroker, or other person, to transact any business or do any act required to be transacted or done in the execution of the trust or the administration of the testator's or intestate's estate, including the receipt and payment of money, and shall be entitled to be allowed and paid all charges and expenses so incurred, and shall not be responsible for the default of any such agent if employed in good faith. (Section 23, (1).)

A banker would not be protected if he acted on the signatures of less than all the trustees, unless such signatures were justified under the above Section. In the *Journal of the Institute of Bankers* (Vol. 48, page 455), Sir John Paget says that Section 23 (1) "must be confined to the employment of an outside agent, entitled to be paid for his services, appointed by the whole body of trustees, either a solicitor, banker, stockbroker, or someone holding an analogous position, to do some specific act or piece of business in relation to the trust property." The words "pay an agent" are inapplicable to trustees delegating any of their powers to one or more of themselves.

In *Green* v. *Whitehead* (1929), 45 T.L.R. 602, it was held that a statutory trustee for sale of land in the United Kingdom who contracts to sell the land and to convey it in pursuance of the trust for sale, cannot delegate to his attorney the execution of the conveyance. Eve, J., said: "The operation of the power of attorney was to commit to the sole and absolute discretion of the grantee all those matters in which a trustee was bound to exercise his own judgment and to use his own discretion. . . . Such a delegation was not permissible."

"A trustee may appoint a banker or solicitor to be his agent to receive and give a discharge for any money payable to the trustee under or by virtue of a policy of assurance, by permitting the banker or solicitor to have the custody of and to produce the policy of assurance with a receipt signed by the trustee, and a trustee shall not be chargeable with a breach of trust by reason only of his having made or concurred in making any such appointment.

"Nothing in this subsection shall exempt a trustee from any liability which he would have incurred if this Act had not been passed, in case he permits any such money, valuable consideration, or property to remain in the hands or under the control of the banker or solicitor for a period longer than is reasonably necessary to enable the banker or solicitor (as the case may be) to pay or transfer the same to the trustee." (Section 23 (3).)

Power to Delegate Trusts during Absence Abroad.

A trustee intending to remain out of the United Kingdom for more than one month may, by power of attorney, delegate to any person (including a trust corporation) the exercise during his absence of all or any of the trusts vested in him. A person being the only other co-trustee and not being a trust corporation cannot be appointed an attorney. The power of attorney shall not come into operation until the donor is out of the United Kingdom, and shall be revoked by his return. (Section 25.)

A trust corporation includes a bank. (See TRUST CORPORATION.)

Power to Delegate Trusts whilst on War Service.

By the Execution of Trusts (Emergency Provisions) Act, 1939, a trustee, personal representative, tenant for life, or statutory owner may delegate to any person or two

or more persons jointly the exercise of any functions vested in him as such during the whole or any part of the period he is engaged on war service and for a period of one month thereafter.

Power to Raise Money by Mortgage.

Where trustees are authorised by the instrument creating the trust, or by law, to apply capital money for any purpose, they shall have power to raise the money by sale or mortgage of all or any part of the trust property.

This Section applies notwithstanding anything to the contrary in the trust instrument, but does not apply to trustees of property held for charitable purposes, or to trustees of a settlement for the purposes of the Settled Land Act, 1925, not being also the statutory owners. (Section 16.)

Death of Trustee.

(See Section 18 under DEATH OF TRUSTEE.)

Power of Appointing New Trustees.

Where a trustee is dead, or remains out of the United Kingdom for more than twelve months, or desires to be discharged, or refuses or is unfit to act therein, or is an infant—

(*a*) the person or persons nominated for the purpose of appointing new trustees by the instrument, if any, creating the trust; or

(*b*) if there is no such person, or no such person able and willing to act, then the surviving or continuing trustees or trustee for the time being, or the personal representatives of the last surviving or continuing trustee;

may, by writing, appoint one or more other persons to be a trustee or trustees. (Section 36, s.s. 1.)

Limitation of Number of Trustees.

The number of trustees of a settlement of land or holding land on trust for sale is limited to four. This limitation only applies to land, and does not apply to land vested in trustees for charitable, ecclesiastical, or public purposes. (Section 34.)

Bankrupt Trustee.

(See Section 41 under BANKRUPT PERSON.)

Executors. Administrators.

This Act, except where otherwise expressly provided, applies to trusts, including, so far as this Act applies thereto, executorships and administratorships. (Section 69 (1).)

Breach of Trust.

(See BREACH OF TRUST.)

Payment into Court.

Where money or securities are vested in trustees, and the majority are desirous of paying the same into Court, but the concurrence of the other or others cannot be obtained, and the money or securities are deposited with a banker, the Court may order payment or delivery of the money or securities to the majority of the trustees for the purpose of payment into Court. (Section 63.)

Infants.

By the Law of Property Act, 1925, an infant cannot be appointed a trustee. (Section 20.)

Trustees for Sale.

Trustees for sale mean the persons (including a personal representative) holding land on trust for sale. (See JOINT TENANTS.)

By the Law of Property Act, 1925, "a power to postpone sale shall, in the case of every trust for sale of land, be implied unless a contrary intention appears." (Section 25, (1).)

"Notwithstanding anything to the contrary in the instrument (if any) creating a trust for sale of land or in the settlement of the net proceeds, the proceeds of sale or other capital money shall not be paid to or applied by the direction of fewer than two persons as trustees for sale, except where the trustee is a trust corporation, but this subsection does not affect the right of a sole personal representative as such to give valid receipts for, or direct the application of, proceeds of sale or other capital money, nor, except where capital money arises on the transaction, render it necessary to have more than one trustee." (Section 27 (2), as amended by the Law of Property (Amendment) Act, 1926.)

Trustees for sale have all powers of a tenant for life under the Settled Land Act, 1925. (Section 28 (1).) (See SETTLED LAND.)

(See BREACH OF TRUST, CUSTODIAN TRUSTEE, PUBLIC TRUSTEE, TRUST CORPORATION, TRUSTEE INVESTMENTS.)

TRUSTEE IN BANKRUPTCY. When a debtor is adjudicated bankrupt, his property shall become divisible amongst his creditors,

and shall vest in a trustee. (See ADJUDICATION IN BANKRUPTCY.) Until a trustee is appointed the official receiver acts as trustee.

The trustee may be appointed by the creditors, or they may leave his appointment to the committee of inspection. The trustee must give security to the satisfaction of the Board of Trade, and the Board, when satisfied, certifies that his appointment has been duly made.

The trustee's title to the bankrupt's property relates back to the earliest act of bankruptcy within three months of the receiving order. (See Section 37 under ADJUDICATION IN BANKRUPTCY.) See also Section 45 under BANKRUPTCY, and Section 46 under ACT OF BANKRUPTCY.

The Bankruptcy Act, 1914, provides—

Powers of Trustee to Deal with Property.

"55. Subject to the provisions of this Act, the trustee may do all or any of the following things—

"(1) Sell all or any part of the property of the bankrupt (including the goodwill of the business, if any, and the book debts due or growing due to the bankrupt), 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:

"(2) Give receipts for any money received by him, which receipts shall effectually discharge the person paying the money from all responsibility in respect of the application thereof:

"(3) Prove, rank, claim, and draw a dividend in respect of any debt due to the bankrupt:

"(4) Exercise any powers, the capacity to exercise which is vested in the trustee under this Act, and execute any powers of attorney, deeds and other instruments, for the purpose of carrying into effect the provisions of this Act:

"(5) Deal with any property to which the bankrupt is beneficially entitled as tenant in tail in the same manner as the bankrupt might have dealt with it.

Powers Exercisable by Trustee with Permission of Committee of Inspection.

"56. The trustee may, with the permission of the committee of inspection, do all or any of the following things—

"(1) Carry on the business of the bankrupt, so far as may be necessary for the beneficial winding up of the same:

"(2) Bring, institute, or defend any action or other legal proceeding relating to the property of the bankrupt:

"(3) Employ a solicitor or other agent to take any proceedings or do any business which may be sanctioned by the committee of inspection:

"(4) Accept as the consideration for the sale of any property of the bankrupt a sum of money payable at a future, time subject to such stipulations as to security and otherwise as the committee think fit:

"(5) Mortgage or pledge any part of the property of the bankrupt for the purpose of raising money for the payment of his debts:

"(6) Refer any dispute to arbitration, compromise any debts, claims, and liabilities, whether present or future, certain or contingent, liquidated or unliquidated, subsisting or supposed to subsist between the bankrupt and any person who may have incurred any liability to the bankrupt, on the receipt of such sums, payable at such times, and generally on such terms as may be agreed on:

"(7) Make such compromise or other arrangement as may be thought expedient with creditors, or persons claiming to be creditors, in respect of any debts provable under the bankruptcy:

"(8) Make such compromise or other arrangement as may be thought expedient with respect to any claim arising out of or incidental to the property of the bankrupt, made or capable of being made on the trustee by any person or by the trustee on any person:

"(9) Divide in its existing form amongst the creditors, according to its estimated value, any property which from its peculiar nature or other special circumstances cannot be readily or advantageously sold."

The permission given for the purposes of this Section shall not be a general permission to do all or any of the above-mentioned things, but shall only be a permission to do the particular thing or things for which permission is sought in the specified case or cases.

Power to Allow Bankrupt to Manage Property.

"57. The trustee, with the permission of the committee of inspection, may appoint the bankrupt himself to superintend the management of the property of the bankrupt or of any part thereof, or to carry on the trade (if any) of the bankrupt for the benefit of his creditors, and in any other respect to aid in administering the property, in such manner and on such terms as the trustee may direct.

Allowance to Bankrupt for Maintenance or Service.

"58. The trustee may from time to time, with the permission of the committee of inspection, make such allowance as he may think just to the bankrupt out of his property for the support of the bankrupt and his family, or in consideration of his services if he is engaged in winding up his estate, but any such allowance may be reduced by the Court."

Right of Bankrupt to Surplus.

"69. The bankrupt shall be entitled to any surplus remaining after payment in full of his creditors, with interest, as by this Act provided, and of the costs, charges, and expenses of the proceedings under the bankruptcy petition."

Subject to the retention of such sums as may be necessary for the costs of administration, the trustee shall declare and distribute dividends amongst all creditors who have proved their debts. (See DIVIDENDS—IN BANKRUPTCY.)

Payment of Money into Bank of England.

"89. (1) The Bankruptcy Estates Account shall continue to be kept by the Board of Trade with the Bank of England, and all moneys received by the Board of Trade in respect of proceedings under this Act shall be paid to that account.

"(2) Every trustee in bankruptcy 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 Bankruptcy Estates Account at the Bank of England, and the Board of Trade shall furnish him with a certificate of receipt of the money so paid.

"Provided that—

"(*a*) If it appears to the committee of inspection that, for the purpose of carrying on the debtor's business, or of obtaining advances, or because of the probable amount of the cash balance, or if the committee shall satisfy the Board of Trade that for any other reason it is for the advantage of the creditors that the trustee should have an account with a local bank, the Board of Trade shall, on the application of the committee of inspection, authorise the trustee to make his payments into and out of such local bank as the committee may select;

"(*b*) in any bankruptcy composition or scheme of arrangement in which the Official Receiver is acting as trustee, or in which a trustee is acting without a committee of inspection, the Board of Trade may, if for special reasons they think fit to do so, upon the application of the Official Receiver or other trustee, authorise the trustee to make his payments into and out of such local bank as the Board may direct.

"(3) Where the trustee opens an account in a local bank, he shall open and keep it in the name of the debtor's estate, and any interest receivable in respect of the account shall be part of the assets of the estate, and the trustee shall make his payments into and out of the local bank in the prescribed manner.

"(4) Subject to any general rules relating to small bankruptcies under Section 129 of this Act, where the debtor at the date of the receiving order has an account at a bank, such account shall not be withdrawn until the expiration of seven days from the day appointed for the first meeting of creditors, unless the Board of Trade, for the safety of the account, or other sufficient cause, order the withdrawal of the account.

"(5) If a trustee 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

of Trade, he shall pay interest on the amount so retained in excess at the rate of twenty per centum per annum, and shall have no claim for remuneration, and may be removed from his office by the Board of Trade, and shall be liable to pay any expenses occasioned by reason of his default.

"(6) All payments out of money standing to the credit of the Board of Trade in the Bankruptcy Estates Account shall be made by the Bank of England in the prescribed manner."

Trustee not to Pay into Private Account.

"88. No trustee in a bankruptcy or under any composition or scheme of arrangement shall pay any sums received by him as trustee into his private account."

Investment of Surplus Funds.

"90. (1) Whenever the cash balance standing to the credit of the Bankruptcy Estates 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 bankrupts' estates, the Board of Trade shall notify the same to the Treasury, and shall pay over the same or any part thereof as the Treasury may require to the Treasury, to such account as the Treasury may direct, and the Treasury may invest the said sums or any part thereof in Government securities to be placed to the credit of the said account.

"(2) Whenever any part of the money so invested is, in the opinion of the Board of Trade, required to answer any demands in respect of bankrupts' estates, the Board of Trade shall notify to the Treasury the amount so required, and the Treasury shall thereupon repay to the Board of Trade such sum as may be required to the credit of the Bankruptcy Estates Account, and for that purpose may direct the sale of such part of the said securities as may be necessary."

The dividends on investments under Section 90 shall be paid into an account to be called "The Bankruptcy and Companies Winding-up (Fees) Account." (Economy, Miscellaneous Provisions, Act, 1926.)

By the Bankruptcy Rules, 1915—

"No. 342. Where the trustee is authorised to have an account at a local bank, he shall forthwith pay all moneys received by him in to the credit of the estate. 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 estate, and shall be signed by the trustee. Every cheque shall be countersigned in cases where there is a committee of inspection by at least one member of the committee, and by such other person, if any, as the creditors or committee of inspection may appoint, and where there is no committee, by such person, if any, as the Board of Trade may direct."

The trustee shall, as soon as may be, take possession of the bankrupt's property. By Section 48 (6)—

"6. Subject to the provisions of this Act with respect to property acquired by a bankrupt after adjudication, any treasurer or other officer, or any banker, attorney, or agent of a bankrupt, shall pay and deliver to the trustee all moneys and securities in his possession or power, as such officer, banker, attorney, or agent, which he is not by law entitled to retain as against the bankrupt or the trustee. If he does not, he shall be guilty of a contempt of Court, and may be punished accordingly on the application of the trustee."

The trustee's title dates back to the earliest act of bankruptcy within three months of the receiving order. (See ACT OF BANKRUPTCY, ADJUDICATION IN BANKRUPTCY.) The property of a bankrupt shall vest in the trustee for the time being without any conveyance, assignment or transfer whatever. (Section 53 (3).)

The remuneration of a trustee shall be fixed by an ordinary resolution of the creditors, or if the creditors so resolve by the committee of inspection, and shall be in the nature of a commission or percentage. (Section 82 (1).)

When the trustee has realised all the property of a bankrupt, or as much as he can, and distributed a final dividend he obtains his release by an order of the Board of Trade. (Section 93.)

The creditors may, if they think fit, appoint more trustees than one. When more than one are appointed the creditors shall declare whether any act to be done by the trustees is to be done by all or any one or more of such persons. (Section 77 (1).)

The creditors may also appoint persons to act as trustees in succession in the event of one or more of the persons first named declining to accept the office of trustee, or failing to give security, or of the appointment of any such person not being certified by the Board of Trade. (Section 77 (2).)

Cheques drawn by a trustee in bankruptcy are exempt from stamp duty. (See Section 148, under BANKRUPTCY.)

See Section 56, above, as to a trustee's power to borrow on the property of the bankrupt. If the trustee's personal liability for an overdraft is required, a guarantee should be obtained.

(See BANKRUPTCY, COMMITTEE OF INSPECTION.)

TRUSTEE INVESTMENTS. A trustee must invest the trust funds in accordance with the terms of the trust deed. In the absence of such directions the Trustee Act, 1925, provides (*inter alia*) as follows—

"Section 1. (1) A trustee may invest any trust funds in his hands, whether at the time in a state of investment or not, in manner following, that is to say—

"(*a*) In any of the Parliamentary stocks or public funds or Government securities of the United Kingdom:

"(*b*) On real or heritable securities in the United Kingdom, including the security of a charge on freehold land by way of legal mortgage and a charge under Section 33 of the Finance Act, 1896:

"(*c*) In the stock of the Bank of Ireland:

"(*d*) In India Seven, Five and a half, Four and a half, Three and a half, Three, and Two and a half per cent stock, or in any other capital stock which may at any time be issued by the Secretary of State in Council of India under the authority of Act of Parliament, and charged on the revenues of India, or any other securities the interest in sterling whereon is payable out of and charged on the revenues of India:

"(*e*) In any securities the interest of which is for the time being guaranteed by Parliament:

"(*f*) In consolidated stock created by the Metropolitan Board of Works, or by the London County Council, or in debenture stock created by the receiver for the Metropolitan Police District, or in metropolitan water stock:

"(*g*) In the debenture or rent charge, or guaranteed or preference stock of any railway company in the United Kingdom incorporated by special Act of Parliament, and having during each of the ten years last past before the date of investment paid a dividend at the rate of not less than three per centum on its ordinary stock:

"(*h*) In the stock of any railway or canal company in the United Kingdom whose undertaking is leased in perpetuity or for a term of not less than two hundred years at a fixed rental to any such railway company as is mentioned in paragraph (*g*) of this subsection, either alone or jointly with any other railway company:

"(*i*) In the debenture stock of any company owning or operating a railway in India the interest in sterling on which is paid or guaranteed by the Secretary of State in Council of India:

"(*j*) In the "B" annuities of the Eastern Bengal, the East Indian, the Scinde Punjaub and Delhi, Great Indian Peninsula and Madras Railways, or in any securities substituted therefor, and any like annuities which may at any time after the commencement of this Act be created on the purchase of any other railway by the Secretary of State in Council of India, and charged on the revenues of India, and which may be authorised by Act of Parliament to be accepted by trustees in lieu of any stock held by them in the purchased railway; also in

deferred annuities comprised in the register of holders of annuity Class D and annuities comprised in the register of annuities Class C of the East Indian Railway Company:

"(*k*) In the stock of any company owning or operating a railway in India upon which a fixed or minimum dividend in sterling is paid or guaranteed by the Secretary of State in Council of India, or upon the capital of which the interest is so guaranteed:

"(*l*) In the debenture or guaranteed or preference stock of any company in the United Kingdom, established for the supply of water for profit, and incorporated by special Act of Parliament or by Royal Charter, and having during each of the ten years last past before the date of investment paid a dividend of not less than five per centum on its ordinary stock:

"(*m*) In nominal or inscribed stock issued, or to be issued, under the authority of any Act of Parliament or Provisional Order, by the corporation of any municipal borough in the United Kingdom having, according to the returns of the last census prior to the date of investment, a population exceeding fifty thousand, or by any county council in the United Kingdom:

"(*n*) In nominal or inscribed stock issued or to be issued by any commissioners incorporated by Act of Parliament for the purpose of supplying water, and having a compulsory power of levying rates over an area having according to the returns of the last census prior to the date of investment, a population exceeding fifty thousand, provided that during each of the ten years last past before the date of investment the rates levied by such commissioners have not exceeded eighty per centum of the amount authorised by law to be levied:

"(*o*) In any stocks, funds, or securities authorised under the Colonial Stock Act, 1900, or any Act extending the same, but subject to any restrictions thereby imposed:

"(*p*) In any local bonds issued under the Housing (Additional Powers) Act, 1919, and mortgages of any fund or rate granted after the passing of that Act under the authority of any Act or Provisional Order by a local authority (including a county council) which is authorised to issue bonds under that Act:

"(*q*) In any stock or securities issued in respect of any loan raised by the Government of Northern Ireland:

"(*r*) In any of the stocks, funds, or securities for the time being authorised for the investment of cash under the control or subject to the order of the Court:

and may also from time to time vary any such investment."

Owing to nationalisation of railways and repayment of India stocks, items (*d*), (*g*), (*h*), (*i*), and (*k*) are no longer available as trustee investments.

"2. (1) A trustee may under the powers of this Act invest in any of the securities mentioned or referred to in Section 1 of this Act, notwithstanding that the same may be redeemable, and that the price exceeds the redemption value.

"Provided that, in the case of any stock mentioned or referred to in paragraphs (*g*), (*i*), (*k*), (*l*), (*m*), (*o*), (*p*) and (*q*) of subsection (1) of Section 1 of this Act, which is liable to be redeemed at par or at some other fixed rate, a trustee shall not be entitled to purchase the stock—

"(*a*) at a price exceeding fifteen per centum above par or such other fixed rate: nor

"(*b*) if the stock is liable to be so redeemed as aforesaid within fifteen years of the date of

purchase, at a price exceeding its redemption value.

"(2) A trustee may retain until redemption any redeemable stock, fund, or security which may have been purchased in accordance with the powers of this Act, or any statute replaced by this Act.

"3. Every power conferred by the preceding Sections shall be exercised according to the discretion of the trustee, but subject to any consent or direction required by the instrument, if any, creating the trust, or by statute with respect to the investment of the trust funds.

"4. A trustee shall not be liable for breach of trust by reason only of his continuing to hold an investment which has ceased to be an investment authorised by the trust instrument or by the general law.

"5. (1) A trustee having power to invest in real securities may invest and shall be deemed always to have had power to invest—

"(*a*) on mortgage of property held for an unexpired term of not less than two hundred years, and not subject to a reservation of rent greater than a shilling a year, or to any right of redemption or to any condition for re-entry except for non-payment of rent: and

"(*b*) on any charge, or upon mortgage of any charge, made under the Improvement of Land Act, 1864.

"7. (1) A trustee may, unless expressly prohibited by the instrument creating the trust, retain or invest in securities payable to bearer which, if not so payable, would have been authorised investments:

"Provided that securities to bearer retained or taken as an investment by a trustee (not being a trust corporation) shall, until sold, be deposited by him for safe custody and collection of income with a banker or banking company.

"A direction that investments shall be retained or made in the name of a trustee shall not, for the purposes of this subsection, be deemed to be such an express prohibition as aforesaid.

"(2) A trustee shall not be responsible for any loss incurred by reason of such deposit, and any sum payable in respect of such deposit and collection shall be paid out of the income of the trust property.

"8. (1) A trustee lending money on the security of any property on which he can properly lend shall not be chargeable with breach of trust by reason only of the proportion borne by the amount of the loan to the value of the property, at the time when the loan was made, if it appears to the Court—

"(*a*) that in making the loan the trustee was acting upon a report as to the value of the property made by a person whom he reasonably believed to be an able practical surveyor or valuer instructed and employed independently by the owner of the property, whether such surveyor or valuer carried on business in the locality where the property is situate or elsewhere, and

"(*b*) that the amount of the loan does not exceed two third parts of the value of the property as stated in the report, and

"(*c*) that the loan was made under the advice of the surveyor or valuer expressed in the report."

TRUSTEE SAVINGS BANKS. The various Acts relating to savings banks were consolidated by the Trustee Savings Bank Act, 1863 (26 & 27 Vict. c. 87). Before a trustee savings bank can be formed, the sanction of the Commissioners for the Reduction of the National Debt must be obtained. A savings bank, although established prior to 1863, must be certified under the Act of 1863, so that its title would be, for example, "Carlisle Savings Bank, established in 1818. Certified under the Act of 1863." Certain savings banks in Scotland are still regulated by an Act of 1819 (59 Geo. III, c. 62) with power to become certified under the Act of 1863, if and when they so desire.

All lands, moneys, goods, chattels, and effects whatever are vested in the trustees. (Act 1863, Section 10.)

By Section 6 of the above Act—

"In the rules of a savings bank it shall be expressly provided—

"1. That no person or persons being treasurer, trustee, or manager of such savings bank, or having any control in the management thereof, shall derive any benefit from any deposit made in such savings bank, save only and except such salaries and allowances, or other necessary expenses as shall according to such rules and regulations be provided for the charges of managing such savings bank, and for remuneration to officers employed in the management thereof, exclusive of the treasurer or treasurers, trustee or trustees, manager or managers or other persons having direction in the management of such savings bank, who shall not directly or indirectly have any salary, allowance, profit, or benefit whatsoever therefrom beyond their actual expenses for the purpose of such savings bank."

Not less than two persons, and where two only, except in the case of savings banks which are open for more than six hours a week, one such person to be a trustee or manager, shall be parties to every deposit and repayment, so as to form at least a double check on all transactions with depositors. (Section 6 (2).)

Each depositor receives a deposit book or pass-book which must be produced every time a transaction takes place.

"The depositor s pass-book shall be compared with the ledger on every transaction of repayment, and on its first production at the bank after each 20th day of November." (Section 6 (3).)

The savings banks' year ends on Nov. 20.

Deposits may be made by, or for the benefit of minors. Money deposited may be withdrawn by a minor, if of the age of seven years or upwards, and his or her receipt shall be a good discharge to the trustees. The deposits of minors under the age of seven may be repaid to any person who satisfies the trustees that he will apply the money for the benefit of such minor.

By the Savings Banks Act, 1920—

"Section 1. (1) There shall, subject as hereinafter provided, be no limit on the amount which may be received by a savings bank authority from any person by way of deposit, or on the amount of Government stock which may be credited by a savings bank authority to the account of any depositor, and all enactments imposing, or relating whether directly or indirectly to, any such limit shall cease to have effect—

"Provided that it shall be lawful for the Treasury at any time by order under this Section to limit the amount which may be so received from any person whatsoever either in any one year or in the aggregate, or the amount of Government stock which may be so credited to any person whatsoever either in one year or in the aggregate."

Deposits are received in the Ordinary Department of a trustee savings bank up to any amount, subject only to an annual limit of £500 and a maximum of £3,000, the money being invested with the National Debt Commissioners. Compound interest at the rate of 2½ per cent is credited to depositors' accounts.

Most trustee savings banks have a Special Investment Department which accepts deposits up to a limit of £1,000, repayable at short notice. The money received is invested in certain gilt-edged securities and the rate of interest payable is fixed from time to time by the trustees.

A depositor may now hold accounts in both a trustee savings bank and in the Post Office Savings Bank, but not in more than one trustee savings bank.

The trustees must pay all money belonging to the bank into the Bank of England or Ireland in the names of the Commissioners for the Reduction of the National Debt, and no sums whatever shall be deposited with any banker except such sums as shall necessarily remain in the treasurer's hands to answer the exigencies of the business. (Act 1863, Section 15.)

Weekly returns must be sent to the Commissioners for the Reduction of the National Debt, showing the amounts of the week's transactions and the balance remaining in the treasurer's hands. (Section 7.)

A bank manager is frequently the treasurer of a savings bank. The treasurer has to give a bond for his faithful services. Where he is a bank manager his bank usually joins in it.

A depositor not being under sixteen years of age may nominate any person or persons to whom any sum not exceeding in the aggregate £100 is to be paid at his decease.

When the sum in a savings bank, which forms part of the personal estate of a person appearing to be deceased, does not exceed £100, probate, or other proof of title of the personal representative of the deceased, may be dispensed with, and such sum may be paid to or among the persons appearing to be beneficially entitled to the personal estate, whether as next-of-kin, or as creditors or otherwise. (Savings Bank Act, 1887, Section 3, as amended by the Savings Banks Act, 1920.)

"Every trustee savings bank which carries on the business of making special investments shall so far as respects that business be subject to the control of the National Debt Commissioners and shall comply with any directions which may from time to time be given by the Commissioners with respect to that business."

"For the purpose of providing for any deficiency which may arise in respect of special investments made by trustee savings banks, there shall be established a guarantee fund under the control of the Commissioners." (Trustee Savings Bank Act, 1918.)

Trustee savings banks are particularly suited for the conduct of savings bank business in large towns, but in some purely agricultural districts the business has become merged in the Post Office Savings Bank.

TRUSTEES FOR SALE. See under JOINT TENANTS and TRUSTEES.

TURN OF THE MARKET. On the Stock Exchange, a jobber is prepared to buy at one price and to sell at a higher, the difference between the two prices being termed the "turn of the market" or the "jobber's turn," and constituting the source of his profits.

TURN-OVER. A trader's total sales for a trading period. In connection with a banking account it is generally taken to mean the total of the debit side of the current account less any debit balance brought forward and any internal transfers, etc. In some parts of the country, it is the custom to charge commission on the turn-over (at say ½ per cent or 1s. per cent, etc.) as remuneration for keeping the account.

TWOPENCE. A silver coin of that denomination is now issued only as Maundy Money (*q.v.*). Its standard weight is 14·54545 grains troy. (See COINAGE.)

UBERRIMAE FIDEI. (Latin, of the utmost good faith.) In the ordinary way, it is not the duty of a contracting party to disclose everything that might influence the other party in his decision to enter into the contract, always provided that such non-disclosure does not cause any statements made to be actually false. There are certain contracts, however, which are voidable unless every material fact within the knowledge of one party has been disclosed to the other party at the time the contract is made. Such contracts are called contracts *uberrimae fidei*. They include contracts of insurance, contracts to take shares in companies, and partnerships. Contracts of suretyship or guarantee are not of this class, but are closely akin to it however. "Very little said that ought not to have been said, and very little not said which ought to have been said, would be sufficient to prevent the contract being valid." (*Royal Bank of Scotland* v. *Greenshields*, [1914] S.C. 259.)

ULTIMATE BALANCE. A term usually used in forms of guarantee. Where a security is drafted to cover the ultimate balance, it covers the final sum owing, arrived at by combining all accounts. (*Mutton v. Peat*, [1900] 2 Ch. 79.) Where an advance has reached the limit of the amount guaranteed the account cannot be arbitrarily ruled off and credits placed to a new account. But once the guarantee has been determined and the ultimate balance arrived at by taking all accounts into consideration, payments to credit can be carried to a new account and do not reduce the guarantee liability.

ULTRA VIRES. That is, beyond the powers. The expression is often used in connection with the borrowing powers of a company. If the directors have power, under the memorandum and articles of association, to borrow up to a certain fixed amount, it is of vital importance that a banker, who contemplates a loan to the company, should see, before granting the loan, that the directors are not acting *ultra vires*, that is, that they are not exceeding or going beyond their powers.* The directors are hedged in by the memorandum and articles of association and beyond these they cannot go. *Intra vires* means within the powers given in the memorandum and articles.

Acts of the directors beyond the authority of the articles can be ratified by the company, provided they do not go beyond the powers given in the memorandum. Acts outside the powers given in the memorandum are void.

* But see under TABLE A.

As to a guarantee given for a loan which is *ultra vires* see under GUARANTEE. (See SUBROGATION.)

UNCALLED CAPITAL. The subscribed capital of a company may be either fully, or only partly, called up. The part which has not been called up is the uncalled capital. The uncalled capital may consist of a portion which may be called up by the directors of the company, as required, and also, as in the case of a banking company which has adopted certain provisions of the Companies Acts, of a portion which constitutes a reserve liability and is not capable of being called up except in the event and for the purposes of the company being wound up. (See RESERVED LIABILITY.)

When debentures are issued by a company they usually include a floating charge upon the uncalled capital. Such a charge does not prevent the directors of the company making calls upon the shareholders as may be required for the purposes of the business.

In certain cases uncalled capital may be specially assigned or hypothecated. When this is done each shareholder should be served with notice that the unpaid capital must be paid only to the person to whom it has been assigned. (See CAPITAL.) A charge on a company's uncalled capital requires registration with the Registrar of Companies under Section 95 of the Companies Act, 1948.

UNCLAIMED BALANCES. (See DORMANT BALANCES.)

UNCLEARED EFFECTS. (See EFFECTS NOT CLEARED.)

UNDER-LEASE. When a lessee grants to another person a part only of his interest in a lease it is called an under-lease. When he parts with the whole of his interest it is an assignment of the lease. (See LEASEHOLD.)

UNDERWRITER. An underwriter is a person who, when an issue of shares is being made by a company, agrees, in consideration of a certain commission, to apply for, or find someone else to apply for, a certain number or all of the shares which are not applied for by the public. An underwriter should, of course, be financially able to fulfil his agreement if necessary. If the shares are not favoured by the public, the underwriters may be saddled with a heavy weight of them, whereas if the issue is eagerly taken up they may receive the commission without having to apply for any shares at all.

An agreement, under hand, to underwrite

requires a sixpenny stamp. If under seal the duty is ten shillings.

The provisions of the Companies Act, 1948, are as follow—

"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 of the company, or procuring or agreeing to procure subscriptions, whether absolute or conditional, for any shares in the company, whether the shares or money be so applied by being added to the purchase money of any property acquired by the company or to the contract price of any work to be executed for the company, or the money be paid out of the nominal purchase money or contract price, or otherwise.

"(3) Nothing in this Section shall affect the power of any company to pay such brokerage as it has heretofore been lawful for a company to pay.

"(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."

The total amount of sums, if any, paid by way of commission in respect of any shares or debentures must be included in the summary to be sent to the registrar. (See Section 124 under REGISTER OF MEMBERS OF COMPANY.) (See COMPANIES.)

In connection with marine and fire insurance, underwriters are the insurers and are so called because their names are written under the contract of insurance. (See MARINE INSURANCE POLICY.)

UNDISCHARGED BANKRUPT. Section 47 (1) Bankruptcy Act, 1914, says, "All transactions by a bankrupt with any person dealing with him *bona fide* and for value, in respect of property whether real or personal, acquired by the bankrupt after the adjudication, shall, if completed before any intervention by the trustee, be valid against the trustee. . . . For the purposes of this subsection, the receipt of any money, security, or negotiable instrument from or by the order or direction of, a bankrupt by his banker, and any payment and any delivery of security or negotiable instrument made to

or by the order or direction of, a bankrupt by his banker, shall be deemed to be a transaction by the bankrupt with such banker dealing with him for value." The risk of opening an account with an undischarged bankrupt is that it is difficult to know if any balances represent after-acquired property or not. By Section 47 (2) it is provided that where a banker finds that a customer is an undischarged bankrupt, he shall, unless satisfied that the account is a trust account, inform the trustee in bankruptcy or the Board of Trade and shall make no further payments out of the account except under an order of the court or with the permission of the trustee. If, however, the trustee does not intervene by the expiration of one month, the account may be continued. Care should be taken in opening an account with the wife of an undischarged bankrupt for it may be used in connection with property belonging to the bankrupt before adjudication.

It is a punishable offence for an undischarged bankrupt to obtain credit for more than £10 or to trade in an assumed name, without disclosing his bankruptcy. If a cheque is presented payable to an undischarged bankrupt, it should not be paid, for to get a good discharge by paying the cheque, a banker must have no notice of the holder's defective title. (Section 59, Bills of Exchange Act, 1882.) The answer on a cheque so returned should cast no reflection on the drawer's credit. (See BANKRUPT PERSON.)

UNDUE INFLUENCE. "Any influence brought to bear upon a person entering into an agreement, or consenting to a disposal of property, which, having regard to the age and capacity of the party, the nature of the transaction and all the circumstances of the case, appears to have been such as to preclude the exercise of free and deliberate judgment, is considered by Courts of Equity to be undue influence, and is a ground for setting aside the act procured by its employment." (Sir Frederick Pollock in *Contract.*) (See under GUARANTEE.)

UNFUNDED DEBT. The unfunded debt of this country consists principally of Treasury Bills, Ways and Means Advances, National Savings Certificates, and short-dated Government Stock such as Savings Bonds, Defence Bonds, etc. In each case the principal is repayable by the Government, but in the operation of "funding the unfunded debt" the principal becomes no longer repayable, and, instead, there is created the right to receive interest in perpetuity on the amount. The right to this interest, or annuity, may be sold, and has practically the same effect as selling so much stock. (See FLOATING DEBT, FUNDED DEBT.)

UNIFICATION OF LAWS OF BILLS OF EXCHANGE. (See UNIFORM LAW.)

UNIFIED STOCK. Where several stocks, bearing different rates, are joined together to form one stock at one rate of interest, the result is termed a unified stock.

UNIFORM LAW OF BILLS OF EXCHANGE. A uniform law of bills of exchange and promissory notes prevails, with small local variations, throughout the English-speaking world. It is called the Anglo-American system. There is also the system of the Uniform Law or Uniform Regulation, which was adopted at the Hague Conferences of 1910 and 1912, and brought into effect by a Convention. The Convention has been signed by the representatives of over thirty countries, including all the great powers except Great Britain and the United States. Instead of more than thirty different laws there are now only the two systems, the Anglo-American and the Uniform Law.

By the Convention the contracting States undertake to bring the Uniform Law into force within their respective territories within six months of adoption. Although the Uniform Law must be enacted textually, the Convention allows that certain of its provisions may be supplemented or varied. For example, Article 37 of the Uniform Law provides that the holder of a bill may present it for payment either on the day that it falls due, or on either of the two following business days. This, in effect, allows two days of grace to the holder, though no time of grace is allowed to the payer. Article 7 of the Convention provides that any contracting State may require bills payable within its own territory to be presented for payment on the day that they fall due; but non-compliance with this rule is only to give rise to right to damages and is not to affect the right of recourse.

Articles 72 and 73 expressly prohibit days of grace.

Under the Convention the contracting States undertake that no bill or promissory note drawn within their territories shall be invalidated for non-compliance with stamp laws, and that stamp laws shall only be enforced by money penalties, with (if necessary) a suspension of remedies until the penalty is paid.

The Hague Conference also prepared a

preliminary draft of a proposed Uniform Law of Cheques, which was to form the subject of a future conference.

UNIT OF VALUE. The coin in any country by which the value of all the other coins is measured. The monetary unit, or unit of value, in this country is the pound sterling, in France it is the franc, in India the rupee, and in the United States the dollar.

UNIT TRUSTS. A trust, whose management company purchases a published list of securities for retention for a long period—usually ten to twenty-one years—the portfolio of securities being known as a "unit." This "unit" is divided for the purposes of sale into sub-units (ranging from 2,000 to 15,000 according to the size of the unit). These sub-units are sold to the public who are issued sub-unit certificates, whose price is based on the market price of the unit portfolio.

The dividends on the underlying securities are pooled and a distribution is made at stated intervals (usually quarterly) to the holders of sub-unit certificates which may be in registered or bearer form.

The management company, which usually administers several trusts, chooses the original portfolio, provides a market, and quotes a price for sub-units and uses any discretionary powers as regards disturbing the portfolio permitted by the trust deed. The main remuneration of the management company consists of a portion of the "loading charge," i.e. a charge made for administering the trust and now usually spread over the life of the trust. and the jobbing turn of 1s. per sub-unit certificate on the re-purchase and re-sale of sub-units.

The trustee company is trustee, not for the management company, but for the sub-unit holders and its function now tends towards that of a custodian trustee. Its principal duties are the custody of the underlying securities, the issue of sub-unit certificates, the receipt of dividends on the underlying securities and the periodical distribution of income to certificate holders. The trustee company's remuneration is derived from an agreed portion of the loading charge and sometimes the use of the trust's floating balances and commission on stock orders.

The idea of the unit or fixed trust originated in the United States, probably as a reaction from the Stock Exchange slump of 1929. The earliest unit trust in this country was formed in April, 1931—The First British—and thereafter the movement grew rapidly, seventy-two trusts operating by April, 1937. Of these fifty-one were fixed and twenty-one were flexible. The basic idea of a security trust is a spread of risk on a predetermined plan—functionally or territorially. Until the inception of the fixed trust this idea found expression in investment and management trusts, whose function was the judicious buying and selling of securities. Fixed trusts shared with these trusts the spread of risk principle—the essential difference lay in the fixity of investments—the portfolio of securities being fixed for periods of ten to twenty-one years with severely restricted provisions as to changes therein in the meanwhile.

The advantages claimed for the unit trust idea of investment are spread of risk, a good yield, physical safety of investment, regular income distribution, and prompt repayment of capital (the management company undertakes to purchase all sub-units offered to it). The movement has been criticised on the grounds that the automatic buying of securities for portfolio purposes has a dangerously artificial effect on Stock Exchange prices, that the competition of different trusts will result in a tendency to go outside sound securities, and that any shaking of confidence in the investing public will result in the selling of their sub-units, which must mean automatic selling of the underlying securities with disastrous results to prices. As the unit trust movement has grown, two tendencies have shown themselves. Firstly, instead of a mixed portfolio, the management company has specialised in one particular market—gold shares, bank and insurance shares, foreign government bonds, aircraft shares, etc. Secondly, there has been a tendency to "unfix" the trust and to make it flexible. One of the merits claimed for the unit trust in its inception was the elimination of errors of judgment by fixing the portfolio at the outset of the trust. Elimination of particular securities was sparingly permitted by the trust deed where dividends were not maintained, or where shares ceased to be quoted or slumped considerably. Later management companies were empowered to substitute securities at their discretion, usually from a panel of securities, and thus the unit trust movement is approximating to the investment trust idea, where the management company has unfettered powers to buy and sell the underlying securities.

In 1934 a sub-committee of the Committee for General Purposes of the Stock Exchange was appointed to consider generally the subject of unit trusts and an interim report was issued at the beginning of 1936 which, whilst

admitting that the movement had come to stay, advocated certain safeguards in the interests of the small investor. The general proposals centred round a Certificate of Recognition to be issued by the Committee of the Stock Exchange after certain documents and information had been filed and specified provisions inserted in the trust deed, and certain particulars inserted in advertisements of the trust.

Early in 1936 the Board of Trade as a result of Parliamentary agitation appointed a Committee to consider the whole question of unit trusts and its report was published in August, 1936 (Cmd. 5259). Its main recommendations were that the movement should not be the prey of men of straw and that the investing public should have the fullest possible information at its disposal concerning all unit trusts. To achieve these objects registration of certain particulars was to be made at the Board of Trade. A certificate of registration should only be issued after the deposit of £20,000 by the management company with the Paymaster-General in respect of each trust managed. Sub-unit certificates and contract notes should be subject to stamp duty. The published accounts should contain full details of management expenses, etc.

The Committee's recommendations have not been implemented by legislation.

UNLIMITED COMPANY. (See COMPANY—UNLIMITED.)

UNUSED STAMPS. USELESS STAMPS. (See SPOILED STAMPS.)

URBAN DISTRICT COUNCIL. When a bank is appointed as banker to an Urban District Council, a Resolution under Seal of the Council should be taken, and the accounts opened in the name of the Council.

There is no statutory requirement as to the drawing of cheques, but it is prudent to arrange for at least two officials to sign. Cheques are frequently drawn in pursuance of an order of the Council as in the case of County or Borough Councils (*q.v.*).

All borrowings require Government sanction, except those falling under Section 215 (*a*) L.G.A., 1933, or money raised by Mortgage of Sewage Works and Plant.

A Resolution of the Council should be obtained covering all borrowings. (See LOCAL AUTHORITIES.)

USANCE. (From Italian *usanza*, custom, usage.) Usance is the period, recognised by custom, for the currency of bills drawn in one country upon another country. For example, bills on Paris are drawn at three months' date, Lisbon ninety days' date, Bombay thirty days' sight. Telegraphic transfers and mail transfers have superseded bills of exchange to a large extent in the settlement of international debts.

USES. The term "uses" is employed when it is intended to vest the legal estate in a person. When the word "trust" is used the person takes a beneficial interest. For example, in a conveyance to John Brown, "to the use of John Brown in trust for John Jones," Brown has the legal estate and Jones the beneficial interest; if, however, the conveyance is "to John Brown to the use of John Jones," Jones takes the legal estate.

The Statute of Uses, which enabled many legal interests to be created at law, was repealed by the Law of Property Act, 1925, but interests in land which under the Statute of Uses or otherwise could, before 1926, have been created as legal interests shall be capable of being created as equitable interests. (Section 4 (1).)

USUFRUCT. (From Latin *usus*, use, and *fructus*, fruit.) In law, the right to enjoy the fruits and profits of something which belongs to another, without having the right to alienate, or charge, or injure the property. A banker may meet the word in the expression "usufruct of investments."

USURY. An exorbitant rate of interest charged by moneylenders. Where proceedings are taken by a moneylender for the recovery of money lent, the Court may, upon evidence, decide that the interest charged in respect of the sum actually lent is excessive, and may relieve the person sued from payment of any sum in excess of the sum adjudged by the Court to be fairly due in respect of principal, interest and charges. (See MONEYLENDER.)

VALUABLE CONSIDERATION. (See CONSIDERATION.)

VALUATION. In endeavouring to arrive at the value of a property for the purpose of granting a loan thereon, it is necessary to ascertain as nearly as possible what it would be likely to sell for at the present moment. It may be expected that the land will, from various causes, probably increase in value within a few years, but a banker does not lend money upon a prospective value but upon its present value. Having ascertained what may safely be regarded as its present sale value, a banker then considers to what extent of that value he should advance. Mortgagees do not, as a rule, advance more than two-thirds of the value, and in some cases, owing to the particular nature of the property or the position of the borrower, not more than one-half its value. Though bankers may wisely, and for safety, be guided by the practice of ordinary mortgagees when advancing upon properties, there are frequently, with bankers, other considerations to be taken into account. It may not be possible for a banker always to make a hard and fast line and require a margin of a half or a third to be absolutely preserved, but a prudent banker considers each case on its merits and preserves a margin which he considers sufficient. A banker should bear in mind that, if he should eventually have to fall back upon the security for repayment of the loan, the amount which he will obtain from a forced sale may probably be much less than its supposed value when the advance was granted, that there will most likely be considerable expenses in connection with the sale, that the property may have deteriorated, and that there may be arrears of interest to be provided for. A good security ought to produce an income at least sufficient to cover the interest upon the loan.

Any restrictions regarding the use to which a property may be put should be carefully considered, as they may have an effect upon the value.

Seeing that the object of taking security is to enable the banker to obtain repayment of the money lent if the debtor fails to repay, it is most important that a security should not be overvalued when making an advance upon it, otherwise that object may be defeated.

To arrive at the value of a property it is necessary to ascertain the gross income, and to deduct therefrom the amount of the outgoings in order to find the net income. Having ascertained the net income, that amount must, to arrive at the capital value, be multiplied by the number of years purchase which is customary in the district on a sale of a similar property. If, for example, cottage property sells, as a rule, in a certain district at ten years' purchase it is clear that if a banker, after having ascertained the net income, assessed its value on a twenty years' purchase, and lent two-thirds thereon, he would, when he required to realise, find himself in an uncomfortable position, e.g. a prudent banker would say—

Income	£30	
	10	years' purchase
	300	
Advance two-thirds =	200	
Margin =	£100	

But if a banker (forgetting local circumstances) estimated the value on a twenty years' purchase, which he knows to be the custom in some other district, his figures would be—

Income	£30	
	20	years' purchase
	600	
Advance two-thirds =	400	
Margin =	£200	

The property on a sale would, of course (other things being equal), realise only what is usual in the district, namely ten years' purchase on the net income, £300. The banker therefore who advanced the £200 would easily get his money back, but the banker who lent £400 would have to look elsewhere for £100.

Even where house property is usually saleable at about twenty years' purchase, a banker should for safety base his valuation on, say, a fifteen years' purchase. There is usually a considerable difference between the price paid for a property and what is obtainable on a forced sale.

If the rent of a house is, say, £30 per annum, a deduction of, say, 10 to 15 per cent for repairs and 5 per cent for collection of rents, etc., should be made in order to obtain the net rental.

In the case of tenement property where the rents are collected weekly, the charge for rent collection, etc., should be put at 7½ per

cent or 10 per cent of the rent. 15 per cent will probably be sufficient for repairs.

In an agricultural estate the rent of farms, fields, cottages, woods, etc., should be ascertained to find the gross rental, and all outgoings such as repairs, taxes, insurance, tithe rent-charges, etc., should be deducted therefrom to arrive at the net income. Questions which may arise are: Is the rent a reasonable one, and can the tenant by cultivating the land pay the rent and live upon the profit which remains? How does the rent compare with adjacent properties? What sort of land is it, is it poor, clayey soil, or bog-land, or steep difficult land to cultivate, or good loam soil capable of good results? What buildings are there on the land, and are they suitable for a farmer? In what state of repair are they? Is there a good and satisfactory water supply? Is the supply from a river or from wells? How is the property situated with regard to a railway? How far off is the station? What is the distance from the nearest market town? (Land near a town is much more valuable than when far removed.) Is there any timber upon the land? Are the buildings, hedges and fences in a good state of repair?

These, and other questions which would be sure to arise, should be considered when examining the figures representing the gross income. With regard to repairs, if the property is not in good order a sum sufficient to put it into repair must be deducted, as well as a sum estimated as being necessary yearly to preserve the property in good condition.

If the property is leasehold the ground rent, length of term, and covenants must be taken into account. If the term is a short one the value will diminish as the date of the expiry approaches. There may be covenants which involve heavy expenditure in making improvements or extensions to the property, or which compel the lessee to work the property (e.g. a coal mine) even if the working results in a heavy loss to the lessee year by year. A covenant to repair may also fall heavily upon a lessee.

The expression "so many years' purchase" means the value of a property in terms of the annual net income derived therefrom. The number of years is found by dividing 100 by the rate per cent of interest which is required. For example, if an investment is required to yield 5 per cent, divide 100 by 5, and 20 is found to be the number of years' purchase which should be paid. If the net income from a property is, say, £100, then multiply that by the twenty years—

£100
20
£2,000

If the property is purchased for £2,000, it is clear that the purchaser, obtaining from it a net income of £100, receives 5 per cent upon his outlay. And so with other rates—

4 per cent = 25 years' purchase
6 per cent = 16⅔ ,, ,,
3 per cent = 33⅓ ,, ,, and so on.

Where a property is in the owner's own occupation, the value may be fairly judged by ascertaining from the rate books at the rate collector's or assistant overseer's office (as the case may be) the amount at which the property is assessed for rating purposes. On house property if the assessment for rates is arrived at by deducting 10 per cent from the gross rent, and in the case of land by a deduction of 5 per cent, when the assessment figures are obtained, one-ninth of the amount must be added to the assessment, in the case of house property, and one-nineteenth added in the case of land in order to obtain the amount which may be considered the gross rental of a place which is in the owner's occupation.

For example, a valuation of an agricultural freehold estate of, say, 50 acres might be as follows—

	£	s.	d.	£	s.	d.
Rent				70	0	0
Deduct outgoings—						
Tithe	2	5	0			
Land Tax		5	0			
Insurance		10	0			
Repairs 10 per cent	7	0	0			
Management 5 per cent. (Collection of rents, etc.)	3	10	0			
				13	10	0
				£56	10	0

In the above example repairs and management expenses are put at 15 per cent of the rent. If, however, the property consisted only of buildings the repairs would usually be put at 10 to 15 per cent, and management at 5 per cent, but where, as in the case supposed, the estate consists of both land and buildings the deduction is, say, 7½ to 10 per cent for repairs and 5 per cent for management. If the buildings,

fences, etc., are in a bad state of repair, 15 per cent might be deducted for repairs.

The rates are paid by the tenant.

If the estate is near a town its value is often taken at thirty years' purchase, or more, but if it is in a remote district twenty years' purchase may probably be taken as its value. A valuation for estate duty must in no case exceed twenty-five years' purchase. For safety a banker might reckon a well situated estate at, say, twenty years' purchase, and one not so well situated at, say, fifteen years. In the above example the £56 10s. net rental must be multiplied by 20 or 15 as the case may be, in order to arrive at the value. The rent of agricultural land varies considerably, say from 18s. to 30s. or 40s. an acre, and in exceptional cases the rent is as high as £3 an acre. A fair average rent of agricultural land may be taken as 20s. an acre.

Under a building lease the lessee or leaseholder is under an obligation to build upon the land, and the owner of the freehold reserves to himself a rent, called the ground rent. The value, in the country, of well secured ground rents, as an investment, is, say from eighteen to twenty years' purchase. In such cases the lease is for a long period, and the only point to consider is the amount of interest required from the investment as represented by giving twenty years' (= 5 per cent) or eighteen years' (= say, 6 per cent) purchase. But if the term to run is short then the reversion must be taken into account; for example, if the ground rent is £10 and a house worth £1,000 has been built on the land, the land, with the house thereon, reverts to the lessor at the expiration of the lease, and if the lease has only a few years to run it is clear that that fact is a very important one in considering the value.

Leasehold property is more precarious than freehold and should be valued to pay a higher rate of interest so that, over and above the interest on the purchase money, it shall include such an amount of interest as will accumulate to the purchase price at the end of the term.

The rule for calculating the value is—

First find the net annual value of the premises and the number of years the lease has to run, then the value of the said number of years at the proper rate of interest, multiplied by the annual value gives the value of the leasehold interest in the premises.

For example, premises let at £450 a year with a ground rent of £50, and with 62 years to run, at 6 per cent interest, would work out as under—

Rent	£450	
Deduct ground rent	50	
	£400	
Year's purchase at 6% with 62 years to run	16·217	
The present value of the premises is		£6,486 16 0

Where money is borrowed on leaseholds the continuous depreciation can be met by insurance. For example, in the case of a private house in London, purchased as an investment for letting, held on lease, 62 years unexpired, rental £200, ground rent £38, purchase money £2,250—

	£ s. d.	£ s. d.
Rental value		200 0 0
Deduct—		
Ground rent	38 0 0	
Premium on Policy to secure £2,250 at expiration of lease, say	13 19 5	
		51 19 5
		£148 0 7

This represents, say, 6 per cent per annum interest on purchase money and repayment of the whole £2,250 at expiration of lease.

Provision must, of course, be made to charge the leasehold with the payment of the premium.

By so insuring, a leasehold, coupled with the policy, becomes a permanent investment, and the result is to render this class of property much more marketable.

Valuations of coal mines, iron mines, works, factories, etc., require to be made by experts.

It is well to remember that a valuation of works as a going concern is quite a different matter from the value when the works are closed. In such a case the works may realise at a sale little more than the price of old material. Buildings which have been specially designed for some particular industry may be of very little value for any other purpose.

When a valuation of a property is placed before a banker it is important to know when, and by whom, it was made. It is also useful to know at whose request it was prepared, for a valuation made on

behalf of a borrower is likely to be more favourable than when made at the request of the banker. As valuations for certain purposes are often quite different from valuations prepared in connection with the negotiations for a loan, it is necessary to ascertain what gave rise to any valuation which is submitted.

Further information regarding values is given under FARM STOCK and LICENSED PROPERTY. (See also FIXTURES, TITLE DEEDS—NOTES RE TITLE, WASTING ASSETS.)

The following are a few simple calculations in connection with investments—

1. To find the price at which £100 stock bearing 5 per cent interest must be bought to yield, say, 4 per cent—

£100
5
4)500
£125

That is, multiply the amount by the rate of interest it bears, and divide by the rate of interest required.

2. To find what interest £100 stock, bearing interest at 5 per cent, will yield when bought at a certain price, say, £150—

£100
5
150)500
£3 6s. 8d.

That is, multiply the nominal amount of stock by the interest it bears and divide by the price to be paid for it.

3. In the purchase of property, divide £100 by the number of years' purchase to be paid, to find the rate per cent which the investment will yield. The "years' purchase" equals the rent multiplied by the number of years required to make the purchase price.

4. To find the number of years' purchase to give in order to obtain a certain rate per cent, divide 100 by the rate per cent. To pay 5 per cent the number of years would be twenty—thus—

Rent £10
20
Price £200

5. Where a property has been purchased for, say, £1,000, and the rent is £50 per annum, divide the rent into the price—

50)1,000
20

and the quotient is the number of years' purchase which has been paid. Twenty years' purchase equals 5 per cent (see No. 3, above). The foregoing remarks and data are at the present time (1949) severely conditioned by the present unprecedented demand for properties at the close of war. Prices ruling to-day for dwelling-houses, and agricultural property in particular, bear no relation to real values. (See ADVANCES, APPRAISEMENT, TITLE DEEDS.)

VALUE IN ACCOUNT. A foreign bill often terminates with such words as "value in account," "which place to account as advised," or "which place to account with or without advice." The words are merely a communication between the drawer and the acceptor, and do not affect a banker.

VALUE RECEIVED. The last words in the body of a bill are very frequently "value received," but they are not necessary to the validity of an English bill, as it is always implied in a bill of exchange that value has been received. It is otherwise in France. By Section 30 of the Bills of Exchange Act, 1882, "Every party whose signature appears on a bill is *prima facie* deemed to have become a party thereto for value."

VALUED POLICY. (See MARINE INSURANCE POLICY.)

VALUER. (See APPRAISER.)

VENDOR'S SHARES. Where a private business is converted into a limited company, the vendor may receive shares instead of cash, in payment of the purchase price. The vendor's shares may rank along with the ordinary shares, or they may form the subject of a special agreement as to dividend.

VESTED REMAINDER. (See REMAINDER.)

VESTING ASSENT. (See PERSONAL REPRESENTATIVES, SETTLED LAND.)

VESTING DEED. A settlement of a legal estate in land is effected by two deeds, a vesting deed and a trust instrument. By the vesting deed the legal estate in the land is conveyed to the tenant for life or statutory owner. It requires a ten shilling stamp. (See SETTLED LAND.)

VICTORY BONDS, 4%. Issued by the Government in 1919. Price of issue £85 per cent. The bonds are redeemable at par by a cumulative sinking fund operating by means of annual drawings. The numbers of the bonds drawn for redemption on each occasion will be advertised in the *London Gazette*. Interest on bonds drawn for repayment will cease from the date on which the bonds become repayable. The bonds will

be accepted at their face value in payment of death duties, provided that they have been held not less than six months preceding the date of death. The bonds may be registered in the holder's name and thus made transferable by deed; and the registered bonds may be re-converted into bonds to bearer by means of transfer. The dividends are paid by means of coupons attached to the bonds, whether registered or to bearer.

The bonds form a trustee investment, and trustees may invest therein notwithstanding that the price may at the time of investment exceed the redemption value of £100 per cent.

VISA. The endorsement placed on a passport by the appropriate officials of the country concerned. Thus an English passport issued for use in France can have a Swiss visa placed thereon to enable the holder to cross the French frontier into Switzerland.

VOLUNTARY CONVEYANCE. A conveyance of property when there is no valuable consideration. A deed of gift is a voluntary conveyance; but a marriage settlement is not, because the marriage is a valuable consideration. (See CONVEYANCE, ESTATE DUTY, GIFTS INTER VIVOS, SETTLEMENTS—SETTLOR BANKRUPT.)

VOLUNTARY LIQUIDATION. VOLUNTARY WINDING UP. (See WINDING UP.)

VOLUNTARY SETTLEMENTS. (See GIFTS INTER VIVOS, SETTLEMENTS—SETTLOR BANKRUPT.)

VOSTRO ACCOUNT. (See NOSTRO ACCOUNT.)

VOTES. The articles of association of a company should be perused when information is required respecting the voting power of members. In the case of a company to which the regulations in Table A apply (see Section 8 of the Companies Act, 1948, under ARTICLES OF ASSOCIATION), the rules are as follow—

"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. 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.

"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 appointor or of his attorney duly authorised in writing, or, if the appointor 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 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." (See COMPANIES, PROXY, RESOLUTIONS.)

VOUCHERS. Paying-in slips, cheques, and office debit and credit slips are included under the term "vouchers." They are documents which vouch for the correctness of book entries.

There is no legal period beyond which old vouchers may be destroyed. A debt is statute-barred at the end of six years, but vouchers are, for various reasons, frequently required for a longer period than six years. (See CANCELLED CHEQUES AND BILLS, WINDING UP.)

VOYAGE POLICY. (See MARINE INSURANCE POLICY.)

WADSET. An old Scots law term for a mortgage or bond and disposition in security.

The word occurs in the Stamp Act, 1891. (See under BOND.)

WAGES CHEQUES OF A COMPANY. Section 319, Companies Act, 1948, provides that a lender of money to a company for the payment of salaries or wages, shall have the same right of priority in a winding-up as the clerk, workman, etc., would have had if he had not been paid. In a winding-up, a clerk or servant, or workman or labourer, is entitled to payment in full of salary or wages for the preceding four months up to a sum not exceeding £200. Hence any advance by a bank for the express purpose of providing salaries and/or wages of a company can be regarded as a preferential claim up to the above limit in the event of the company's liquidation. It is advisable to charge such cheques, clearly marked and drawn as wages cheques, to a separate account designated "wages account" and opened under resolution of the company. The procedure is useful where a banker does not wish to increase the company's advance against the existing security and the company appears to have sufficient free assets to support the preferential claim if winding-up takes place. The practice has been approved by the courts, in particular in the case of *National Provincial Bank* v. *Freedman & Rubens* (1934).

WAIVER. To waive a right is to relinquish or renounce all claim to it; the renunciation is termed a waiver.

A bill may be discharged by waiver where the holder of it at or after maturity absolutely and unconditionally renounces his rights against the acceptor. (Bills of Exchange Act, 1882, Section 62.)

WALKS. In London, cheques which are drawn upon non-clearing banks are collected by clerks called "walks clerks," and the cheques are said to be included in the "walks" collection. (See CLEARING HOUSE.)

WALL STREET. The New York Stock Exchange.

WAR SAVINGS CERTIFICATES. (See NATIONAL SAVINGS CERTIFICATES.)

WAREHOUSE-KEEPER'S CERTIFICATE, OR RECEIPT. A document issued by a warehouse-keeper stating that certain goods are held in his warehouse at the disposal of the person named. Such a certificate or receipt is not transferable and the goods are not deliverable upon its production. It is simply an acknowledgment of having received certain goods.

When the owner wishes to obtain the goods he signs a delivery order (*q.v.*); or, if desired, he may obtain a warehouse *warrant* stating that the goods are deliverable to the person named therein or to his assigns by indorsement. (See WAREHOUSE-KEEPER'S WARRANT.)

When warehouse-keepers' receipts are pledged with a bank, the customer should sign the bank's letter of lien. The receipts should be in the bank's name, and when delivery of the goods is required the bank will sign a delivery or transfer order. (See DELIVERY ORDER, TRANSFER ORDER.)

A banker should be careful to see that a warehouse-keeper's receipt states that the goods mentioned in the receipt are subject to rent only in respect of those goods, otherwise he may find that they are subject, in addition to that rent, to a general lien for rent and charges due in respect of other goods from the party to whom the receipt was originally issued. (See *Bankers' Advances Against Produce*, by A. Williams.)

In the event of the customer's bankruptcy, unless the goods have been registered in the banker's name, the property will vest in the trustee in bankruptcy.

Although a receipt or certificate is usually regarded as a mere acknowledgment of the goods, the term "warehouse-keeper's certificate" is sometimes used (see Factors Act, Section 1 (4)) to indicate a document which is evidence of the title of the person named therein or his assigns to the goods. (See DOCK WARRANT.)

No stamp duty is exigible on a warehouse-keeper's receipt.

WAREHOUSE-KEEPER'S WARRANT. WAREHOUSE WARRANT. A document issued by the keeper of a warehouse stating

SUGAR WAREHOUSE.

No.

Warrant.

For

Imported in the ship from

Captain entered by

on the

Rent payable from the

Examined and entered by

Ledger Folio

Liverpool 19 .

Deliver the above-mentioned goods to or assigns, by indorsement hereon.

Warehouse-keeper.

that the goods named therein are entered in the books and are deliverable to the person mentioned or to his assigns by indorsement. (See WARRANT FOR GOODS.)

A warehouse warrant may be in the form shown on page 652.

This warrant must be presented at the office, regularly assigned by indorsement, and all charges paid, before delivery of the goods can take place.

On the back: Deliver the within-mentioned goods to or order.

The expression "warehouse-keeper's certificate" in the Factors Act (*q.v.*) refers to such a document as is here described as a warrant.

The remarks made regarding a dock warrant (see DOCK WARRANT) apply equally to a warehouse-keeper's warrant.

(See WAREHOUSE-KEEPER'S CERTIFICATE OR RECEIPT.)

WARRANT (HIS MAJESTY'S). By the Stamp Act, 1891, the stamp duty is—

	£	s.	d.
WARRANT under the sign manual of His Majesty . . .		10	0

WARRANT FOR GOODS. A document issued by a dock company, a warehouse-keeper, or wharfinger, stating that the goods named therein are deliverable to the person mentioned, or his assigns by indorsement. (See DOCK WARRANT, WAREHOUSE-KEEPER'S WARRANT, WHARFINGER'S WARRANT.)

The expression "warehouse-keeper's certificate' (as in the Factors Act, *q.v.*) is sometimes used instead of the expression "warehouse-keeper's warrant."

Various warehouse-keepers have acquired statutory powers (by private Act of Parliament) to issue warrants transferable by indorsement. Such warrants, duly indorsed, transfer a good title to the goods (subject to the payment of rent and charges due to the warehouse-keeper in respect of the goods specified in the warrant). But where warrants are issued by warehouse-keepers who have not obtained statutory powers to issue warrants transferable by indorsement, a bank should, when taking such warrants, have them issued in its own name. The Courts have held that a warehouse-keeper cannot be compelled, without his consent, to hold goods deposited with him for any person other than the original depositor. When, however, the above-mentioned statutory powers have been acquired, such consent is not necessary, and the holders of warrants can transfer the property in the goods without reference to the warehouse-keeper. (See WAREHOUSE-KEEPER'S CERTIFICATE OR RECEIPT.)

When taking warehouse-keepers' warrants and receipts a banker should satisfy himself as to the reliability of the issuer, if a private firm or individual.

When these documents of title are pledged with a bank as security for an advance, the customer should sign the bank's pledge form (stamped 6d.) in which he agrees, amongst other things, that "all bills of lading, dock or warehouse warrants or other documents, now or at any time deposited by me with you and all property represented thereby are hereby pledged and hypothecated to you, and shall be held by you as security for payment on demand of all amounts which I may now owe you, or for which I may from time to time become indebted to you; and that the bank shall have full liberty to dispose of the property at its discretion." He also undertakes to keep the property covered by insurance against fire.

Documents of title to goods pledged with a bank may be handed back to a customer on his signing an undertaking to pay the proceeds from sales of the goods direct to the bank. (See TRUST RECEIPT.)

See under FACTORS ACT as to the effect of pledges of documents of title by mercantile agents, etc.

By the Finance Act, 1949, stamp duty was abolished in respect of warrants for goods.

WARRANT OF ATTORNEY, A written authority given by a debtor to a solicitor empowering the solicitor to appear in an action against the debtor and to suffer judgment for the debt to be entered up against him.

The stamp duty, by the Stamp Act, 1891, is—

	£	s.	d.
WARRANT OF ATTORNEY to confess and enter up a judgment given as a security for the payment or repayment of money, or for the transfer or retransfer of stock. See MORTGAGE, etc.			
WARRANT OF ATTORNEY of any other kind		10	0

(See COGNOVIT ACTIONEM.)

WASTE. (See IMPEACHMENT OF WASTE.)

WASTE BOOK. WASTE SHEETS. In the waste book the various transactions which occur in a bank office during the day are entered and split up under different headings. For example, if a customer pays in to his credit an amount consisting of cash and cheques, the full sum is entered in the "credit current accounts" column on the left-hand side, and on the opposite side of the book, the "cash in" side, the credit is analysed, bronze, silver and notes being placed in one column, and the cheques being separated, e.g. in a country bank, into

columns for London, local, head office, country, own cheques, or such divisions as are considered necessary.

At the end of the day, the totals of the various columns on the right-hand side are cross-cast to agree with the total of the "current accounts" and "impersonal" columns on the left-hand side. The totals of the several columns in which the cheques are listed, when cast form a check on the total of the cash remittance to Head Office.

The waste book may be planned so as to balance with, and act as a check upon, the day book and the various outward remittances, etc. The columns and method of keeping the book vary somewhat in different banks.

Instead of a book some banks, for convenience, use loose sheets, called waste sheets, the sheets being bound up into book form at intervals. The waste book or waste sheet have been for the most part superseded by mechanised book-keeping.

WASTING ASSETS. Assets, such as mines or quarries, which become used up in course of time by working them. A mine, for example, which is being steadily worked will become less valuable year by year as the mineral is extracted. To meet this depreciation in the value of the property, a certain sum should be provided out of each year's profits. Although it is a prudent and usual course for a company to adopt, there is, however, no obligation upon the company to provide such a fund. The Court of Appeal have held "that there is no law to prevent a company from sinking its capital in the purchase of a property producing income, and dividing that income without making provision for keeping up the value of the capital, and that fixed capital may be sunk and lost and yet the excess of current receipts over current expenses may be applied in payment of a dividend, though where the income of a company arises from the turning over of circulating capital, no dividend can be paid unless the circulating capital is kept up to its original value, as otherwise there would be a payment out of capital." (*Verner* v. *General and Commercial Investment Trust*, [1894] 2 Ch. 239.)

Plant and machinery wear out and become obsolete. A liberal depreciation should therefore be written off each year and a reserve fund be established for the purpose of replacing such assets when necessary.

A patent worked by a company is a wasting asset, and as it can only, as a rule, be kept alive by payment of certain fees for fourteen years, that period is called the life of the patent.

WATERBORNE AGREEMENT. An agreement of London Underwriters which came into force on 1st February, 1938, by which war risk insurance cover is confined to the period whilst the interest is on board the overseas vessel, the only exception being that in the case of transhipment fifteen days is allowed whilst the goods are being transhipped to the oncarrying overseas vessel.

WATERED CAPITAL. WATERED STOCK. The stock, or capital, of a company is said to be "watered" when it is added to, or increased, by way of paper entries only, or when further shares are issued without any provision being made to provide yield thereon. For example, if a company with 1,000 shares on which it pays 10 per cent increases the number to 2,000, the yield on the 2,000 will only be 5 per cent unless more profits are earned.

WAYS AND MEANS ADVANCES. The name given to advances made by the Bank of England to the Treasury to meet payments for the annual supply services. These advances are borrowed on the credit of sums authorised by Parliament for Ways and Means, and are to be distinguished from "Deficiency Advances" (*q.v.*) which are obtained to meet permanent charges.

WEIGHT-NOTE. A document issued by some dock companies giving the weight of certain goods in their possession, and stating the amount of the purchase money which is owing. The possessor of the weight-note is entitled to the warrant for the goods upon complying with the conditions of sale and paying the balance of the purchase money as expressed on the weight-note on or before the expiration of the time for payment of the purchase money.

WHARFINGER'S RECEIPT, OR CERTIFICATE. A document issued by a wharfinger (that is, the owner of a wharf) acknowledging receipt of goods committed to his charge, or certifying that certain goods are ready for shipment. Such a receipt or certificate is not ordinarily a document of title and the goods named therein do not pass by indorsement of the receipt. To effect a delivery of the goods, a delivery order must be signed. When these receipts are pledged with a bank as security they should be in the name of the bank. The same remarks apply as in the case of a WAREHOUSE-KEEPER'S CERTIFICATE OR RECEIPT (*q.v.*).

A wharfinger's warrant stating that the

goods are deliverable to the person named therein or to his assigns by indorsement, does form a document of title. (See WAREHOUSE WARRANT, DOCK WARRANT, FACTORS ACT.)

WHARFINGER'S WARRANT. A document issued by a wharfinger which states that the goods named therein are deliverable to the person mentioned or his assigns by indorsement.

The remarks which apply to a dock warrant apply equally to a wharfinger's warrant. (See DOCK WARRANT, WARRANT FOR GOODS.)

WILL. A writing by which an owner of property declares what is to be done with it after his death. The person making a will is called the testator. A minor cannot make a valid will, except in the case of a soldier, sailor, or airman on active service. These parties can make verbal wills in the presence of witnesses; if written, their wills need not be attested. [Wills (Soldiers and Sailors) Act, 1918.]

A testator's signature should be witnessed by two persons. The following is a common attestation clause: "Signed by the said the testator in the presence of us, both present at the same time, who in his presence and at his request and in the presence of each other have hereunto set our names as witnesses."

A legatee, or his wife (or husband as the case may be), should not be a witness to the testator's signature, otherwise the legacy will be forfeited.

An executor (who takes no benefit under the will) is a competent witness.

A will is revoked by the marriage of the testator.

From 1st January, 1926, by the Law of Property Act, 1925, a will expressed to be made in contemplation of a marriage shall not be revoked by the marriage. (Section 177.)

A codicil is an addition to a will by which some change in the terms of the will is effected, and it must be dated and signed by the testator and attested by two witnesses in the same way as the former part of the document.

The testator and each witness must sign his name or initials against any alteration or interlineation that may be made in a will; but no alteration must be made after execution. The alterations should also be referred to in the attestation clause.

The persons who are appointed by the testator to carry out the provisions of his will are called the executors, and it is their duty to obtain probate of the will; that is, an official copy of the will issued by the registrar of the registry where the will is proved. If any trusts are created by the will the persons whom the testator names to carry out the provisions of such trusts are called the trustees. A copy of a will may be seen, on payment of a fee of one shilling, at the registry where it was proved; and a copy of any will may be seen at Somerset House on payment of a like fee. A copy of a will may be obtained on payment of a fee regulated by the length of the document.

The following is a form of a simple will where a husband leaves everything whatsoever to his wife—

This is the last will and testament of me John Brown of Carlisle in the county of Cumberland, Grocer, as follows, that is to say, I devise and bequeath all my real and personal estate whatsoever and wheresoever and of every description unto my wife Mary, her heirs, executors, administrators and assigns absolutely for ever. I appoint my said wife Mary sole executrix hereof. I revoke all prior wills by me made. In witness whereof I have hereunto set my hand this second day of July one thousand nine hundred and

JOHN BROWN.

Signed by the testator as and for his last will in the presence of us who, at his request in his presence and in the presence of each other have hereunto set our names as witnesses

JOHN JONES, English Street, Carlisle, Draper.
JAMES SMITH, 2 North Street, Carlisle, Clerk.

(See EXECUTOR.)

By the Industrial and Provident Societies (Amendment) Act, 1913, a member of a registered society may nominate any person to receive at his death such property in the society as may be his at the time of his decease (whether in shares, loans, or deposits). Such nomination shall be valid to the extent of one hundred pounds, but not further. A nomination may be revoked by a subsequent nomination, but shall not be revocable or variable by the will of the nominator. The marriage of a member shall operate as a revocation of any nomination made by him before such marriage.

It is recorded that the shortest, properly executed will known to have been proved was "all to L——," the name being that of the testator's wife. Probably one of the longest is a will in Somerset House said to contain 95,940 words.

WINDBILLS. WINDMILLS. Names sometimes given to accommodation bills (*q.v.*). Another similar name is "kites."

WINDING UP. There are three types of winding up: compulsory, voluntary, and voluntary under the supervision of the Court.

Compulsory Winding Up.

Under Section 222 of the Companies Act, 1948, 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 the opinion that it is just and equitable that the company shall be wound up.

As to (*e*), a company is deemed to be unable to pay its debts if a creditor for a sum exceeding £50 has served a demand for payment on the company and has had no satisfaction at the end of three weeks. Also if execution or other process issued on a judgment is returned unsatisfied in whole or in part, and also if it is proved to the satisfaction of the Court that the company is unable to pay its debts. (Section 223.)

An application to the Court for winding up is made by petition presented by the company or by any creditor or contributory. Where a company is being wound up voluntarily or subject to supervision, a winding up petition may be presented by the Official Receiver.

The effect of a winding up order is to make the Official Receiver provisional liquidator until such time as the Court appoints a liquidator. Where a liquidator is not so appointed, the Official Receiver continues as liquidator of the company. A statement of affairs must be submitted to the Official Receiver within fourteen days.

On the making of a winding up order, separate meetings of creditors and contributories are held to determine if application shall be made to the Court for the appointment of a liquidator in place of the Official Receiver and also to determine if a committee of inspection shall be appointed to act with the liquidator and if so, to elect members thereof.

The powers of a liquidator in a compulsory winding up are given in the Companies Act, 1948, as follows—

"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."

Payments of Liquidator in English Winding Up into Bank.

"Section 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."

By Section 242—

"(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."

Where a special account is opened all payments out are to be made by cheque payable to order, bearing on its face the name of the company, to be signed by one member of the committee of inspection and by such other person, if any, as the committee may appoint. If there is no committee of inspection, the Official Receiver may, subject to the directions of the Board of Trade, exercise the functions of a committee with regard to a special bank account. See further under LIQUIDATOR.

Compulsory winding up commences from the date of the presentation of the petition, unless a voluntary winding up was previously in progress, in which case the winding up dates from the passing of the resolution to wind up. Cheques drawn on the account for routine purposes of the company (e.g. wages, rates, etc.) and paid between the date of presentation of the petition and the date of the winding up order are usually validated by the liquidator.

Voluntary Winding Up.

"Section 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."

There are two kinds of voluntary winding up—a creditors' voluntary winding up and a members' voluntary winding up. Both kinds are brought about by resolutions of the company which must be advertised in the *London Gazette* within seven days. Both types of winding up commence from the passing of the resolution, from which date the company must cease to carry on business except for the purpose of winding up. On notice of the passing of a winding up resolution the account should be stopped.

Creditors' Voluntary Winding Up.
(Sections 292–300).

A meeting of creditors must be summoned for the day or the day following the day when the meeting of the company is to be held at which the resolution to wind up is to be proposed. The meeting of creditors must be advertised in the *London Gazette* and at least two local newspapers. The creditors and the company at their respective meetings may nominate a liquidator; if different persons are nominated, the creditors' nominee shall be liquidator, and if the creditors make no nominations, the company's choice shall be liquidator. The creditors may appoint a committee of inspection to act with the liquidator. On the appointment of a liquidator the powers of the directors cease except so far as the committee of inspection or, if there is no such committee, the creditors, sanction continuance thereof. If a vacancy occurs by death, resignation or otherwise in the office of liquidator, the creditors may fill the vacancy. If more than one liquidator is appointed, the resolution should state how many are to act; failing any such provision not less than two must act.

Members' Voluntary Winding Up.
(Sections 283–291.)

This occurs where the directors of a company at a board meeting make a statutory declaration, within the five weeks immediately preceding the date of the passing of the winding-up resolution, to the effect that they have made a full inquiry into the affairs of the company and have formed the opinion that the company will be able to pay its debts in full within twelve months from the commencement of the winding up. The declaration must embody a statement of the company's assets and liabilities as at the latest practicable date before the making of the statutory declaration.

Any director making such a declaration without having reasonable grounds for believing that the company will be able to

pay its debts in full within the specified period, incurs heavy penalties.

If the company is duly wound up, but its debts are not paid or provided for in full within the stated period, it will be presumed until the contrary is shown that the director did not have reasonable grounds for his opinion. (Section 283.)

The company in general meeting shall appoint one or more liquidators, and thereupon the powers of the directors cease except in so far as the company in general meeting or the liquidator sanctions the continuance thereof. Vacancies in the office of liquidator may be filled by the company in general meeting, subject to any arrangement with its creditors.

A members' voluntary winding up usually occurs where a reconstruction is to take place or where the company is being dissolved for reasons not connected with its solvency.

Winding Up Subject to Supervision of the Court.

(Sections 311–315)

Where a company has passed a resolution for voluntary winding up, the Court may on petition make an order for the continuance of the voluntary winding up subject to the supervision of the Court. For this purpose it may appoint an additional liquidator. The date of commencement of winding up is the date of the resolution to wind up voluntarily.

Proofs and Claims in Winding Up.

In every type of winding up the bankruptcy rules apply to the respective rights of secured and unsecured creditors.

In a compulsory winding up proof of debt is required as in bankruptcy, but in a voluntary winding up a formal claim on the liquidator is all that is usually necessary.

(For LIQUIDATORS' ACCOUNTS and BORROWINGS BY LIQUIDATORS, see under LIQUIDATOR; see also COMMITTEE OF INSPECTION, COMPANIES, OFFICIAL RECEIVER.)

WINDING UP UNREGISTERED COMPANIES. Sections 398–399, Companies Act, 1948, provide for the winding up of unregistered companies. The expression "unregistered company" does not include a company registered under the Joint Stock Companies Acts, or the Companies Act, 1862, or the Companies (Consolidation) Act, 1908, the Companies Act, 1929, or the Companies Act, 1948, but includes any partnership, association or company consisting of more than seven members, and any foreign partnership, association or company, and any trustee savings bank certified under the Trustee Savings Bank Act, 1863. (Section 398.)

All the provisions of the Companies Act, 1948, with respect to winding up shall apply to an unregistered company, with the following exceptions and additions—

An unregistered company shall, for the purpose of determining the Court having jurisdiction in the matter of winding up, be deemed to be registered where its principal place of business is situate.

No unregistered company shall be wound up under this Act voluntarily or subject to supervision.

The circumstances in which an unregistered company may be wound up are as follows (that is to say)—

(*a*) If the company is dissolved, or has ceased to carry on business, or is carrying on business only for the purpose of winding up its affairs;

(*b*) If the company is unable to pay its debts;

(*c*) If the Court is of opinion that it is just and equitable that the company should be wound up.

Section 399 (8) provides that—

"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." (See COMPANIES.)

WINDOW DRESSING. A term particularly applied to the practice of banks of calling in loans when making up their published statements so that their cash resources may make a good showing in relation to liabilities. The practice was condemned in the Macmillan Report (*q.v.*) in para. 370, which says: "We are not aware that these practices serve any useful purpose. We think they are not creditable to our banking system, and we recommend that they should be given up at once."

On the day when a bank made up its weekly statement, it increased its cash resources by calling in day-to-day loans from the discount houses by arranging for its bill holdings to mature on that particular day of the week, and by postponing purchases of bills and securities. The monthly published statement showed the average position on the four weekly making-up days. Each bank had a different making-up day,

with resultant dislocation to the Money Market. In 1939, in order to economise labour, the banks reverted to the original system of a monthly making-up day, but still with a different day for each bank. The only value, if any, of the system was the disciplining of the Discount Market, which was regularly compelled to get accommodation from the Bank of England, with resultant scrutiny of its resources by that Institution.

The practice did not cease, however, until 31st December, 1946. An official announcement was made earlier in that month as follows—

"On and from 31st December, 1946, the Monthly Statements of Balances of London Clearing Banks will be aggregated on common dates synchronising with the weekly Return of the Bank of England and compiled on the third Wednesday in each month, except in the months of June and December, when the Statements will be made up as at the 30th and 31st respectively . . . . Taking into account the general disposition of Bank assets now ruling, it has been agreed in consultation with the Bank of England that the daily ratio of cash balances to deposit liabilities will be maintained on the basis of 8 per cent."

"WIRE FATE." (See "ADVISE FATE.")

WITHOUT DAYS OF GRACE. (See DAYS OF GRACE.)

WITHOUT PREJUDICE. Where an offer is made "without prejudice" by one of the parties in a dispute, it means that if the offer is not accepted no advantage can be taken of it by either side. The phrase occurs most frequently in the communications which pass between the solicitors of litigants, when efforts are being made to settle differences without going into court. No letter that is written and headed or stated to be "without prejudice," can be used at any time so as to prejudice either party, and the same rule applies to the reply sent to a letter so marked.

WITHOUT RECOURSE. If the drawer, or an indorser, of a bill adds these words (or the equivalent "*sans recours*") to his signature, he thereby cancels his own liability to any subsequent holder, in the event of non-payment of the bill. But an indorser who has added the words "without recourse" does not clear himself from liability if any signature prior to his own should prove to be a forgery.

The Bills of Exchange Act, 1882, provides that the drawer of a bill, and any indorser, may insert therein an express stipulation, (1) negativing or limiting his own liability to the holder, (2) waiving as regards himself some or all of the holder's duties. (Section 16.) (See DRAWER, INDORSER.)

WITNESS. (See ATTESTATION.)

WORLD BANK. (See INTERNATIONAL BANK FOR RECONSTRUCTION AND DEVELOPMENT.)

WRIT. By the Stamp Act, 1891, the stamp duty is—

WRIT—	£ s. d.
(1) of Acknowledgment under the Registration of Leases Act, 1857	5 0
(2) of Acknowledgment by any person infeft in lands in Scotland in favour of the heir or disponee of a creditor fully vested in right of an heritable security constituted by infeftment	
(3) of Resignation and Clare Constat	

WRIT OF DISTRINGAS. (See DISTRINGAS.)

WRIT OF ELEGIT. (*Elegit*, Latin, he has chosen—so called because the plaintiff has the choice of this writ in preference to other writs.) A writ issued by the Court directing the sheriff to take possession of a judgment debtor's lands, and to receive the rents until the debt is satisfied. Any writ or order affecting land may be registered under the Land Charges Act, 1925. (See LAND CHARGES, WRIT OF FIERI FACIAS.)

WRIT OF EXTENT. Where moneys are paid into the account of a customer, which moneys the banker knows to belong to the Crown, a writ of extent may be issued by the Crown for the recovery of those moneys.

WRIT OF FIERI FACIAS. Commonly called a writ of fi. fa.

A writ issued by the Court directing the sheriff to take possession of a judgment debtor's goods, in order to satisfy a debt. The sheriff is empowered to seize, in addition to "goods," money, bank notes, cheques, bills, promissory notes, and other securities for money belonging to the debtor. (See WRIT OF ELEGIT.)

WRONGFUL CONVERSION. (See CONVERSION.)

WRONGLY DELIVERED. (See under CLEARING HOUSE.)

YEARLY TENANCY. A tenancy from year to year and which, by a six months' prior notice to quit from the landlord or the tenant, terminates at the end of the first year or end of any succeeding year. For example, if the tenancy commenced on 1st July, the six months' notice must be given so that the tenancy may terminate on a 1st July.

YEARS' PURCHASE. The value of property is frequently indicated as being equal to the rent for a certain number of years. For example, a house with a rental of £50 at 20 years' purchase = £1,000. If £1,000 is paid for the house, the investment (with a rental of £50) thus yields 5 per cent. The percentage is ascertained by dividing one hundred by the number of years' purchase which is given. (See VALUATION.)

YORK-ANTWERP RULES. (See GENERAL AVERAGE.)

YORKSHIRE REGISTRY OF DEEDS. There are three registries in Yorkshire—

Northallerton for the North Riding (established 1734).

Beverley for the East Riding (established 1707). The East Riding includes Kingston-upon-Hull.

Wakefield for the West Riding (established 1703).

Each registry has two distinct departments, the one dealing with registrations and searches under the Yorkshire Registries Acts, 1884–5, and the other with registrations and searches under the Land Charges Act, 1925.

There is no registration for the City of York proper.

When deeds of land registrable under the Yorkshire Registries Acts are received, the banker should look to see that they bear the Registrar's memorandum sealed and signed. When a deed is registered, a note is placed upon it by the Registrar as follows—

"A copy of this Indenture" or "A memorial was registered at the Riding Registry of Deeds at the sixteenth of August, 19 , at 10.0 in the forenoon in volume page number "

Registrar."

Where land is registered under the Land Registration Act, 1925 (see LAND REGISTRATION), it supersedes the registration of the deeds under the Yorkshire Registries Act.

Instruments entitled to be registered have priority according to the date of registration and not according to the date of the instrument.

A document may be registered under the Yorkshire Registries Acts either by enrolling a copy of the instrument or by a memorial.

By the Law of Property Act, 1925—

"(1) It shall not be necessary to register a memorial of any instrument made after 1925 in any local deeds registry unless the instrument operates to transfer or create a legal estate, or to create a charge thereon by way of legal mortgage; nor shall the registration of a memorial of any instrument not required to be registered affect any priority.

"(2) Probates and letters of administration shall be treated as instruments capable of transferring a legal estate to personal representatives.

"(3) Memorials of all instruments capable of transferring or creating a legal estate or charge by way of legal mortgage, may, when so operating, be registered." (Section 11.)

The registration of a memorial of any instrument transferring or creating a legal estate or charge by way of legal mortgage constitutes actual notice to all persons and for all purposes whatsoever, as from the date of registration and so long as the registration continues in force. The registration of a memorial of an instrument not required to be registered does not operate to give notice of such instrument or the contents thereof. This Section operates without prejudice to the provisions of the Act respecting the making of further advances by a mortgagee and only applies to land within the jurisdiction of the registry. (Section 197.)

In relation to the making of further advances, where the prior mortgage was made expressly for securing a current account or other further advances, a mortgagee shall not be deemed to have notice of a mortgage merely by reason that it is registered in a local deeds registry, if it was not so registered at the time when the original mortgage was created or when the last search by the mortgagee was made. (See Section 94 (2), under MORTGAGE.)

A banker, therefore, can make further advances, and need not search the local registry before doing so, provided he had no notice of a subsequent mortgage when the original mortgage was given, or when the last search was made. He must not, however, make any further advance after having received express notice of a subsequent mortgage, unless such advance is made in

compliance with an obligation to make further advances.

The land charges departments in Yorkshire are concerned principally with the land charges in Classes A, B, C, and D, as detailed in the article LAND CHARGES.

In the case of a general equitable charge, restrictive covenant, equitable easement, or estate contract affecting land within any of the three Ridings, and in the case of any other land charge (not being a local land charge) created by a document which shows on the face of it that the charge affects land within any of those Ridings, registration shall be effected in the prescribed manner in the appropriate local deeds Registry in place of the Registry in London. (Law of Property (Amendment) Act, 1926.)

The registration of any instrument under the Land Charges Act, 1925, constitutes actual notice to all persons and for all purposes, and operates without prejudice to the provisions respecting the making of further advances by a mortgagee. (Section 198, Law of Property Act, 1925.)

With regard to a memorandum of deposit of title deeds, some authorities are of opinion that it need not be registered. The registries however, are open to register them, as the registry authorities consider that the position of equitable securities created by the deposit of title deeds is probably not altered by the Law of Property Act, 1925, and that Section 14 of the Yorkshire Registries Act, 1884, will still operate when a memorandum is registered in the deeds department. That Section provides that all assurances entitled to be registered under the Act "shall have priority according to the date of registration thereof, and not according to the date of such assurances." The undertaking to execute a legal mortgage which is usually included in a memorandum of deposit constitutes an "estate contract" and is registrable as such in the land charges department under Section 10, c. iv, of the Land Charges Act, 1925, but bankers do not, as a rule, register it so long as the deeds remain in their own possession.

A charge on land by a company requires registration under the Companies Act, 1929, and, if the land is within the jurisdiction of the Yorkshire Deeds Registry, a legal mortgage must, in addition, be registered in the local registry.

Where debentures of a company are secured by a trust deed creating a legal mortgage on land in Yorkshire, the trust deed requires registration under the Yorkshire Registries Act. If there is no covering trust deed, each debenture giving a legal charge on land must be registered.

Where a banker receives deeds of property in Yorkshire he can ascertain from a search of the Register whether there are any charges upon the property. If a charge exists but has not been registered, it will not affect the banker's charge when duly registered.

Searches should be made for any mortgage or charge which has been registered under the Yorkshire Registries Acts, 1884–5, and under the Land Charges Act, 1925. Separate applications should be made, on the prescribed forms, to the deeds department and to the land charges department of the appropriate local registry. (See summary of registrations and searches under MORTGAGE.)

By Section 3 of the Yorkshire Registries Amendment Act of 1885—

"Subject to any rules made under the principal Act, a caveat may at any time be given with respect to any lands within any of the three Ridings by any persons claiming to be entitled to any interest in such lands in favour of any person named therein, and may be registered under the principal Act; and every caveat so registered shall, unless removed or cancelled in accordance with any rules to be made for that purpose under the principal Act, remain in force for such time as may be specified therein in that behalf."

Under the rules of the Yorkshire Registries Act, 1884, any person may search the Register and may take copies or extracts (with lead pencil) therefrom upon payment of the prescribed fees.

Where any instrument is required to be enrolled, a corporation may act by any of its officers authorised in that behalf under the seal of the corporation, and a firm may act by any of its members.

All documents for enrolment must be written or printed upon strong, wide-ruled demy paper of a size of 16 inches in length by 10 inches in breadth, or thereabouts, with an inner margin about 2 inches wide, and an outer margin about three-quarters of an inch wide.

Where any map or plan is indorsed upon any instrument to be registered, an exact copy shall be drawn upon the copy or memorial, or upon linen cloth and attached thereto.

Where any instrument is required to be enrolled in the Register at full length, a true copy of such instrument shall be presented

for the purpose of being actually enrolled and bound up in the Register, and (except where such instrument is a caveat or affidavit), there shall be prefixed to such copy a statement, to be enrolled therewith, setting forth the following particulars—

(*a*) The name and description of the residence and occupation of the person on whose behalf the instrument is to be registered.

(*b*) The date of the instrument.

(*c*) (1) In the case of a deed, the names of the parties.

(2) In the case of a will, the name of the testator.

(*d*) (1) In the case of an instrument other than a will the names of all the parishes wherein any lands known to be affected by such instrument are situate, in such manner as the same are expressed or mentioned in such instrument or to the same effect.

(2) In the case of a will the names of all the parishes wherein any lands known to be affected by such will are situate, so far and in such manner as the same are expressed or mentioned in such will or to the same effect.

And such statement shall be signed by the person on whose behalf such instrument is to be registered.

Where an official search for any instrument registered or enrolled is required, the registrar gives a certificate of the result of the search signed by him and sealed with the Registry seal. A certificate of an official search under the Yorkshire Registries Act, 1884, "shall be receivable in evidence." (Section 21.)

Where a mortgage or charge affecting lands within the Ridings has been registered and is afterwards satisfied, any person entitled to any interest in such lands may present an affidavit of discharge with reference thereto, for enrolment in the Register. Such affidavit of discharge shall be in the prescribed form. It must be made by the debtor or some person claiming under him an interest in the property affected and the consent must be given by the creditor or some person claiming under him. Every signature must be verified by the oath of some credible witness. Where such mortgage or charge was originally created by deed or writing, the original shall be produced to the Registrar with an entry thereon showing that it is cancelled.

When an advance has been repaid and the security is no longer required, the banker's mortgage should, with the discharge or reconveyance, remain with the deeds of the property as part of the chain of title. (See MORTGAGE, RECONVEYANCE.)

On the next page is shown a specimen form of Memorial of Deed. The memorial must be impressed with a 2s. 6d. stamp before being sent to the Registry. (See MEMORIAL.)

Where registration is effected by copy of a deed or document, the form is exempt from stamp duty. The Registrar must be satisfied that the deed submitted for registration is duly stamped.

FEES (YORKSHIRE REGISTRIES ACT).

N.B.—A Folio contains 72 words.

Registration or Enrolment of any Document (including indorsement of any Certificate required by Section 9 of the Act) except a Caveat (In the West Riding Registry the fee is 7s. 6d.)	*Five shillings.*
Registration or enrolment of any Caveat.	*Two shillings.*
Copy or Extract.	
Where Copy or Extract does not exceed two folios .	*One shilling.*
For each additional folio . . .	*Fourpence.*
If certified, an additional fee per folio of . . .	*Twopence.*
Map or Plan.	
Copy . . .	*From Two shillings to Two guineas, according to labour involved.*
If certified, an additional fee of .	*Two shillings.*
Search, Ordinary.	
In any one name, for any period not exceeding ten years	*One shilling.*
For every additional period of five years	*Sixpence.*
Search, Official (including Certificate of result).	
In any one name, for any period not exceeding ten years	*Seven shillings and sixpence.*
For every additional period of five years	*Two shillings and sixpence.*

FORM No. 7.

FORM OF MEMORIAL OF DEED.

1. To be left blank for filling in at the office.

Volume [1] Page No.

WEST RIDING OF YORKSHIRE.
REGISTRY OF DEEDS.

2. Describe the kind of deed. It will be sufficient to describe an indenture as an indenture, but a fuller description may be given if desired; as, for instance, Indenture of Lease.

Memorial of a [2]

for registration

3. Fill in the date of the deed.

Date [3]

4. Fill in the name and description of the residence and occupation of all the parties to the deed so far as set out therein, beginning a new line with the name of each party.

Parties [4] of of first part,

of
and } of second part, etc., etc.
of

5. Fill in a description of all the lands affected by the deed within the Riding, and the names of all the townships, etc., wherein the same are situate in such manner as the same are expressed or mentioned in such deed or to the same effect.

Description of Lands [5]

6. Fill in the names and description of the residences and occupations of all the witnesses to the execution of the deed so far as appears therein, beginning a new line with the name of each witness.

Witnesseses [6] of witness

to the execution by

of witness

to the execution by etc.

7. Here the memorial must be signed and sealed by some or one of the parties to the deed, or some or one of their or his heirs, executors, administrators, guardians, or trustees. And if a description of the residence and occupation of the person executing the memorial does not otherwise appear therein such a description must be added after his signature.

(Signed) [7]

8. Here the memorial must be attested by one or more witnesses one of whom at least shall have been a witness to the execution of the deed.

Witness [8]

Typewritten Memorials may be received at the Registry under the following conditions—

The Memorials must be typed with a pure black carbon record ink from ribbons or pads which are not exhausted, but give a distinct black impression and contain no aniline dye;

The machine used in typing the Memorials must not be defective, particularly with regard to its alignment;

The spacing of the lines must be of sufficient width to render the Memorial clearly legible.

To satisfy the last condition the lines should be at least three-eighths of an inch apart.

APPENDIX I

SCOTTISH BANKING

BY

C. J. SHIMMINS

Associate of the Chartered Institute of Secretaries

Certificated Associate of the Institute of Bankers, with Distinction in Practice and Law of Banking

Member of the Institute of Bankers in Scotland

Examiner in "Advanced Banking Law and Practice" to the Institute of Bankers in Scotland

Author of "Banking Questions," etc.

ACCOUNTANT OF COURT. The Accountant of the Court is an officer of the court acting under the Judicial Factors Acts, 1849 and 1889. His position in bankruptcy or sequestration is a supervisory one. The administration and management of the estate is vested in the creditors who act through a trustee and his council of advice, called Commissioners. The accountant supervises and sees that regulations and statutes are obeyed. Periodical accounts, together with documents are lodged by the trustee. In addition, the duties of the accountant of court are annual audits under the Judicial Factors Department, the care of consignations and private references.

ACT AND WARRANT OF A TRUSTEE IN SEQUESTRATION. This is a statutory order made by the sheriff confirming the trustee's election by the creditors and transferring the bankrupt's estate to the trustee with power to sue. It is sometimes called the trustee's confirmation. It is evidence of the trustee's title and, if authenticated by the Court of Session, it is good throughout the British dominions. The title dates back to the date of sequestration and carries with it all the estate whether heritable or moveable, except property held in trust by the bankrupt. It includes land in England, but the title must be registered in the Bankruptcy Court in England. A copy is sent by Sheriff-Clerk to the Accountant of Court within three days after issue. (See BANKRUPTCY in this Appendix.)

ACTION. This is the legal process by which a legal right is ascertained and determined. Where a creditor cannot obtain payment from his debtor, he will bring an action against him for the amount due. The decision of the Court, if in his favour, is known as a "decree," and the next step is to extract the decree, that is, he obtains from the court an official document setting forth the judgment and containing the warrant to have it enforced. The creditor will then give the debtor a charge of payment where a charge is necessary. The effect is that the debtor is ordered, by a messenger-at-arms or sheriff officer, to implement the decree within so many days. If the debtor

fails to pay then, the creditor may proceed to do diligence. In many cases a creditor may proceed to do diligence without an action, e.g. where he holds a bill of exchange or cash credit bond and where a debtor is liable under a deed in which he has consented to registration, and the deed has been properly registered, e.g. a personal bond. (See COURTS in this Appendix.)

ADJUDICATION. Adjudication is the diligence whereby a creditor may attach the lands or other heritable property of his debtor in satisfaction of, or in security for his debt. Adjudication proceeds only upon a liquid document of debt, e.g. a bill of exchange or upon a debt constituted by decree. Adjudications proceed against debtors by way of action in the Court of Session. Moveable subjects cannot be adjudged, but it includes the following subjects: heritage and heritable rights, personal rights in lands, life rents, reversions, mines, fishings, heritable securities, stock of the Bank of Scotland, Royal Bank and stock of other chartered companies from which the diligence of arrestment is excluded. The principal exception is land belonging to a railway company and used for the purpose of their undertaking. Creditors who adjudge within a year and a day after decree in the first effectual adjudication or at any time before it, may be ranked *pari passu* with the first effectual adjudication. To prevent the subjects from being conveyed or dealt with to the pursuer's prejudice, a note of the summons may be registered in the Register of Inhibitions and Adjudications. Under the Conveyancing Act, 1924, an adjudication is ineffectual unless an extract of the decree or an abbreviate, i.e. an abstract of the decree, has been recorded in the Register of Sasines. The decree gives the adjudger a redeemable right only and not an absolute right of property. If during ten years (called the *legal*, elliptical for "legal term of redemption") after the date of the decree, the debt is extinguished by payment or by intromissions with the rents, the debtor is entitled to have his estate back. On the other hand, if the debt is not satisfied within the ten years, the

creditor has it in his power to foreclose the debtor from exercising his right of redemption, this being carried out by raising an action of declarator of expiry of the legal. If the debtor does not exercise his right of redemption, the court will grant a decree that the right has expired and the adjudger will obtain the absolute ownership of the property. There is no "legal" in an adjudication in security, e.g. in an action where the debtor is *vergens ad inopiam*, and the subjects remain always redeemable.

AGENT. The law in Scotland is practically similar to that in England, and reference should be made to the explanations under AGENT and FACTORS ACT, 1889, in the Dictionary. The authority of an agent to open a separate bank account on behalf of his principal, e.g. a bank account opened by a law agent on behalf of a disclosed client, does not include authority to overdraw the account (*Royal Bank of Scotland* v. *Skinner*, *O. H.*, [1931] S.L.T. 382).

AGRICULTURAL CREDITS (SCOTLAND) ACT, 1929. The Scottish Agricultural Securities Corporation Ltd. was established in 1933 under the provisions of Part I of the Act. Advances are made by the Corporation (*a*) upon the security of agricultural land and (*b*) in respect of major improvements to agricultural land and buildings.

(*a*) In this case loans may be granted for periods not exceeding sixty years, and shall be repayable by equal half-yearly instalments of principal and interest combined. The following table shows the period and rate of repayment—

For a 60 year loan the half-yearly payment will be £2 per £100.

For a 50-year loan the half-yearly payment will be £2 2s. 6d. per £100.

For a 40-year loan the half-yearly payment will be £2 6s. 8d. per £100.

For a 30-year loan the half-yearly payment will be £2 14s. 2d. per £100.

For a 20-year loan the half-yearly payment will be £3 10s. 0d. per £100.

For a 10-year loan the half-yearly payment will be £5 19s. 5d. per £100.

The security will be taken by way of an *ex facie* absolute disposition and the property will require to be valued by an independent surveyor, and all the expenses are borne by the borrower.

(*b*) The Corporation is also authorised to make loans to proprietors for the purposes of the Land Improvement Acts, 1864 and 1899. The purposes for which loans may be granted under these Acts are as follows—

1. Erection and reconstruction of cottages required for occupation by agricultural labourers essential for the proper cultivation of agricultural holdings.

2. Erection, replacement, and reconstruction of farm buildings (including cases where the work is necessary to comply with the requirements of the Local Authorities) essential to the proper cultivation of an agricultural holding.

3. Drainage, including pipe draining and mole draining, and the straightening, widening, or deepening of drains, streams, and water-courses, on agricultural land, in order to maintain or increase food production.

4. Provision of essential water supply in connection with an agricultural holding.

5. Provision of fencing essential for the proper management of an agricultural holding and woodlands.

6. Making of farm roads and farm bridges essential to the working of an agricultural holding.

7. Irrigation, warping, and reclamation of agricultural land.

The maximum statutory period is forty years and the rates of half-yearly payments are similar to the above table for ordinary loans.

Under Part 2 of the Act certain provisions were made for dealing with short term credits, but no society in Scotland has so far undertaken the working of Part 2 of the Act. The property which may be effected by such a charge shall be the stock of merchandise belonging to the society in pursuance of the objects which it has been formed to carry out.

APPORTIONMENT. The Apportionment Acts of 1834 and 1870, of which the latter is the more important, apply equally to England and Scotland. Questions often arise with regard to the apportionment of the price where shares are bought or sold which belong to a trust estate where there is a tenant for life. In Scotland it has been held that when company shares belonging to a trust are sold *cum* dividend, the proceeds of the sale are to be apportioned between capital and income, which is contrary to the English practice. On the other hand, where shares are purchased *cum* dividend for a trust, it is thought that according to Scots Law there should be no apportionment between the capital and income. As a matter of practice, Scottish accountants often apportion such purchases.

ARRANGEMENT (DEED OF). (See BANKRUPTCY in this Appendix.)

ARRESTMENT. Arrestment is the diligence by which moveables which are not in the possession of the debtor himself are attached, either in security of an alleged or constituted debt, or in execution of the decree judicially establishing the debt. It is defined by Erskine as the "command of a judge by which he who is debtor in a moveable obligation to the arrester's (that is the party who lays on the arrestment) debtor is

prohibited to make payment of his debt or perform his obligation till the debt due to the arrester who uses the diligence be paid or secured." The person in whose hands the arrestment is made is known as the arrestee. Arrestment also serves as an inchoate diligence for transferring the debt or fund to the arrester; but to complete the transfer to him a decree of forthcoming must be obtained. Arrestments may be either (1) in execution or (2) in security.

(1) Arrestment in execution arises when the arrester holds a decree of court, or decree of registration, i.e. an extract from the books of Council and Session or Sheriff Court Books in which has been recorded, either a deed, e.g. bond, bearing a registration clause or a notarial protest or a bill of exchange.

(2) Arrestment in security is either (*a*) on the dependence of a summons or (*b*) in security of a liquid obligation. It is not as a rule competent in respect of a future or contingent debt unless on special grounds, e.g. the common debtor is on the brink of bankruptcy (*vergens ad inopiam*) or in *meditatione fugae*. The warrant now most commonly used to secure a claim in an action in the Supreme Court is that introduced by the Personal Diligence Act, 1838, which provides that all Court of Session summonses concluding for payment of money may contain a warrant to arrest moveables, debts, and money, until caution be found that the same shall be made forthcoming. When the defender is resident abroad he must be subjected to the jurisdiction of the Scottish Courts, and a separate arrestment may be required (*ad jurisdictionem fundandam*) to render arrestment on dependence competent.

Subjects of Arrestment. All personal debts due to the common debtor, or moveable property belonging to him in the hands of an independent third person may, generally speaking, be arrested. Among things arrestable are corporeal moveables, balance due by a bank on current or savings account or on deposit receipt, arrears of or current rents and interests, ships, shares, bonds and debentures of incorporated companies, beneficial interests in a trust estate and a sum in a policy of insurance is arrestable during the life of the insured, and if he dies before the next premium falls due, the arrestment is effectual, but it is not settled what is the effect after another premium has fallen due.

Bills and Promissory Notes which pass from hand to hand like money are not arrestable. Wages of "all labourers, farm servants, manufacturers, artificers and work people" are free from arrestment except in so far as they exceed 35s. per week. Wearing apparel is not arrestable. A debt is not arrestable if it is alimentary, except in so far as such a provision may be in excess of a fair aliment. Under the Merchant Shipping Act, 1894, arrestments are prohibited against the wages of seamen or apprentice seamen. At Common Law the salary, wages, or pensions of any public servant in the service of the Crown are not arrestable.

The usual procedure for serving an arrestment is to serve on the arrestee a schedule specifying the debt or other subjects arrested, and arresting generally all goods, gear, debts, money, and moveable effects in the hands or custody of the arrestee. The only exception to the rule that the arrestment must attach subjects in the hands of a third party is in the case of ships. In the case of companies registered under the Companies Act, 1948, arrestment is served at the registered office, although in the case of banks it is usual to use an arrestment both at Head Office and at the branch of the bank where the subjects are believed to be. Arrestments prescribe in three years except in the case of debts of £20 or under where the period is three months. Decree of forthcoming completes the arrester's rights to the subjects arrested.

An arrestment in security is used during the dependence of an action either at the raising of the action or at any time before decree has been obtained. When a creditor sues his debtor, he may not obtain decree immediately, because the debtor may dispute the claim and lodge defences to the action. The creditor may consider it desirable to prevent the debtor from disposing of his moveable property before the final decree has been obtained, and accordingly when taking out the summons, obtains from the Court a warrant to arrest on the dependence of the action. This prevents the arrestee from parting with the property arrested until the action has been disposed of by the Court. If the creditor is successful, he can then proceed under his decree.

An arrestment is not complete diligence, and this must be followed by an action of furthcoming. This is an action at the instance of the arrester against the arrestee, to which the common debtor is also called upon as a defender to make furthcoming payment and delivery of the sum arrested

or so much thereof as will pay the debt and expenses.

The objects of such an action are—

(i) To ascertain the amount of the debt due by the arrestee to the common debtor, or, where goods have been arrested, the present extent of the subjects.

(ii) To have the arrestee decerned to pay the fund to the arrester, or, where goods have been arrested, to authorise a sale and payment out of the proceeds.

ASSIGNATION. This is a written deed of conveyance made in favour of another person, the maker is called the *cedent*, whilst the other party is the *cessionary* or *assignee*. This form of conveyance is used in the same way as the transfer of a choses in action by virtue of the Judicature Act. Where the right assigned is a debt or obligation, the debtor is called the common debtor, and the transfer is not complete until notice, called intimation, is given to the common debtor. There are few subjects which are not assignable, and intimation is not necessary in the case of a bill of exchange or bill of lading. Intimation is carried out by a copy of the assignment being made by a notary, and forwarded to the common debtor. This, followed by an acknowledgment, is conclusive of the assignee's title. A certified copy sent by post would be sufficient. Assignations are preferred according to the dates of intimation. (See LIFE POLICIES AS SECURITY in this Appendix.)

ATTESTATION. (See DEEDS, EXECUTION OF, in this Appendix.)

AUTHORISED CIRCULATION. The authorised circulation is the amount certified by the Government up to which a Scottish bank can issue notes without holding Bank of England notes, or gold, and silver in security. A certain amount of Bank of England notes are earmarked at the Bank of England as belonging to each of the Scottish banks. See also under BANK OF ISSUE in the Dictionary. The following are the authorised circulations of each of the Scottish Banks—

	£
Bank of Scotland	396,852
Royal Bank	216,451
British Linen Bank	438,024
Commercial Bank	374,880
National Bank	297,024
Union Bank	454,346
Clydesdale & North of Scotland Bank	498,773
Total	£2,676,350

BACK BOND OR BACK LETTER. (See HERITABLE SECURITIES in this Appendix.)

BANKERS' LIEN. In Scotland, banks have a general lien or right of retention over all unappropriated negotiable instruments belonging to, and deposited with them by a customer in security of his balance on general account. In England, the lien is more extensive and covers securities whether negotiable or not. The lien does not include bills discounted or bills appropriated, "such as bills indorsed to him for the special purpose of negotiation." There is no right of lien over securities deposited for a particular purpose, e.g. bonds lodged specifically for safe custody. All bills lodged for collection and not particularly appropriated come under the lien. On the balance of all his personal accounts, the customer must be debtor to the banker before any right of lien arises. Since every partner is liable for the whole debts of the partnership, a banker has a lien over a sum at credit of one of the partner's accounts for advances to the firm. By the terms of their constitution, banks have usually a lien over their own stock or shares in security of advances made to shareholders. Under Scots Law, differing in this respect from that of England, a banker has no implied power to sell the subjects of lien, and can only retain them until the claim is settled. A bank's lien does not cover debts not yet due, unless the debtor is either bankrupt or *vergens ad inopiam*.

BANKRUPTCY AND INSOLVENCY. The law of bankruptcy in Scotland differs considerably from that which is administered in the English courts. Each country has its own statute, that in Scotland being the Bankruptcy (Scotland) Act, 1913. The expression "bankruptcy" has no technical meaning as in England, where a person is not bankrupt until an adjudication order has been made. In Scotland the expression covers almost every phase of inability to pay debts, from simple insolvency to the equivalent of English bankruptcy. *Insolvency* means the condition of a debtor where he cannot pay his way any longer according to the obligations he has undertaken, and it is immaterial whether the cause of his insolvency has arisen through an excess of liabilities over assets (absolute insolvency) or through assets being unrealisable (practical insolvency). Insolvency, unlike bankruptcy, is not a legal *status*, but depends on the circumstances of each separate case. When a debtor becomes insolvent, he becomes really a trustee holding his property on behalf of his creditors, and should he make any gratuitous alienation or make over any

part of his estate in further security to a creditor, these transactions can be challenged at the instance of creditors at common law or under statute. (See under GRATUITOUS ALIENATIONS and FRAUDULENT PREFERENCES TO CREDITORS in this Appendix.)

When a person is unable to meet his obligations, and acknowledgment of his liability to do so is made public in the method provided by Statute (Bankruptcy Act, Section 5), the status or condition of bankruptcy has arisen, and the debtor is technically *notour bankrupt*. In other words, notour bankruptcy is insolvency which is publicly acknowledged.

Notour Bankruptcy. Notour bankruptcy is constituted in the following circumstances—

(1) By sequestration or by the issuing of an adjudication of bankruptcy or the granting of a receiving order in England or Ireland, or

(2) By insolvency, concurring—

(*a*) (1) With a duly executed charge for payment, where a charge is necessary, followed by the expiry of the days of charge without payment, e.g. an extract registered protest of a bill of exchange.

(2) Where a charge is not necessary, with the lapse without payment of the days which must elapse before poinding or imprisonment can follow on a decree or warrant for payment of a sum of money, e.g. on a decree in Small Debt Court granted when debtor is personally present.

(3) With a poinding or seizure of any of the debtor's moveables for non-payment of rates or taxes;

(4) With a decree of adjudication of any part of his heritable estate for payment or in security; or

(*b*) With sale of any effects belonging to the debtor by the landlord under an action called "Sequestration" for rent (Section 5).

A partnership may be rendered notour bankrupt in any of the foregoing ways, or by any of the partners being rendered notour bankrupt for a firm debt (Section 6).

Notour bankruptcy is very much the same as insolvency followed by the commission of an Act of Bankruptcy in English Law.

Effects of Notour Bankruptcy. The chief effects of notour bankrupty are: (1) it lays the debtor's estate open to sequestration without his consent; (2) it cuts down all *voluntary* transactions granted by the debtor within sixty days prior to the date of notour bankruptcy, or any time thereafter where they have been granted in satisfaction or further security of a prior debt: under the Companies Act, 1947, the period of sixty days is extended to six months; and (3) it equalises arrestments and poindings used within sixty days prior to the notour bankruptcy or within four months thereafter.

Sequestration. Sequestration has been defined as "a judicial process for rendering litigious the whole estate of the bankrupt in order that no part of it may be carried away by a single creditor for his own benefit, but that the whole may be vested in a trustee, to be administered by him and distributed among the various creditors in accordance with certain fixed legal rules of distribution." It also enables the debtor, under certain conditions, to obtain a discharge and to start afresh. Before the estates of a living person can be sequestrated, he must be subject to the jurisdiction of the Supreme Courts of Scotland. In the case of a deceased debtor, he must have been subject to the same jurisdiction at his death (Section 11). This jurisdiction is constituted by (1) domicile in Scotland; (2) ownership of real estate in Scotland: or (3) forty days' continuous residence in Scotland. It should be noted that an existing English sequestration, even though dormant, prevents the award of a sequestration in Scotland.

All arrestments and poindings on and after the sixtieth day prior to the sequestration are of no effect but, the arrester or poinder is entitled to a preference in the ranking in respect of the expenses of procuring the warrant for and executing the diligence. Sequestration shall, at the date thereof, be equivalent to an arrestment in execution and decree of forthcoming and to an executed or completed poinding and the trustee can therefor rank *pari passu* with diligence that were used on or subsequent to the sixtieth day prior to notour bankruptcy on which the sequestration was founded.

Procedure. The application for sequestration is made by means of a petition presented (*a*) by the debtor himself with the concurrence of a creditor or creditors whose debt or debts together amount to not less than £50; (*b*) by a creditor or creditors with the above qualification, provided the debtor has become notour bankrupt not more than four months before and has within a year previous resided or had a dwelling-house or place of business in Scotland or, in the case of a firm, has within such time carried on business in Scotland and any partner has so resided, or if the firm has had a place of business in Scotland. In the case of a deceased debtor the petition may be presented by a mandatory to whom the deceased had granted

a mandate to apply for sequestration, or on the petition of a creditor qualified as above (Section 11).

Sequestration may be awarded by the Court of Session, or by the Sheriff of the county in which the debtor has resided or carried on business for the year preceding the date of the petition or, in case of a deceased debtor, for the year preceding his decease (Section 16). Hence, if the petition is in the Sheriff Court, continuous residence, etc., for the previous year for that Sheriffdom is requisite, otherwise the petition must be presented in the Court of Session.

Where sequestration of a deceased debtor's estates is applied for, it cannot be awarded until the expiry of six months from the debtor's death, unless he was at the time of his death notour bankrupt, or unless his successors concur in the petition or renounce the succession (Section 13).

The petitioning creditor must produce, along with the petition, an oath or affidavit to the verity of the debt claimed by him, and also the account and vouchers of the debt. The affidavit must state co-obligants and security held for the debt. This affidavit may be taken before a judge, magistrate, J.P., notary public or commissioner for oaths in the High Court of Justice in England or Ireland (Section 21). In the case of a corporation, the oath may be made by the secretary, manager, cashier, clerk or other principal officer, or, in other concerns, by a partner (Section 24).

Where the petition is presented by a creditor, the debtor is cited to appear; but where the debtor himself petitions, the award of sequestration is immediately made. The date of the order for citation in the former case, and of the award of sequestration in the latter, is the *date of the sequestration*. If the debtor in the former case does not pay the debt after citation, the award is made on the lapse of the days of citation.

After the award of sequestration, proceedings are in the Sheriff Court; and, if the petition has been presented to the Court of Session, it is remitted to the Sheriff Court of the appropriate county for subsequent procedure, subject always to certain rights of appeal in specified cases to a judge of the Court of Session.

The Accountant of Court supervises all sequestrations in the same manner as the Board of Trade supervises trustees in bankruptcy in England.

When the award of sequestration is made, a meeting of creditors, called the first statutory meeting, is fixed, and notice is given in the *Edinburgh Gazette* (Sections 63–69). A judicial factor may be appointed on the application of a creditor or by the court, pending the appointment of a trustee. At the first statutory meeting, creditors assemble and produce their affidavits and grounds of debt. The bankrupt produces a statement of his affairs and a trustee is appointed. The trustee is not an official of the court, and anyone may be appointed, subject to the following exceptions: (*a*) *At Common Law.* Personal incapacity, hostility to bankrupt, incongruity of duties, and personal misconduct. (*b*) *By Statute.* Bankrupt himself, persons closely related by blood or in business, interest opposed to general interests of creditors, and person outwith jurisdiction of Court of Session.

The meeting fixes the caution to be found by the trustee. Three Commissioners, who correspond to the English Committee of Inspection, are also appointed by the meeting to superintend the proceedings of the sequestration, give advice and assistance to the trustee, decide as to dividends, and to ascertain the situation of the bankrupt estate from time to time. The commissioners may be creditors or their mandatories, and are subject to the same disqualifications as have just been stated for a trustee, but caution for intromissions is not necessary.

Recall of Sequestration. The deliverance awarding sequestration is not subject to review, but in certain circumstances the sequestration may be recalled. A petition for recall is competent only to the Court of Session. The petition may be by (1) a debtor if he has not consented to sequestration; (2) successors of a deceased debtor, if they have not consented, unless a mandatory of the deceased debtor has applied for sequestration; or (3) any creditor. The petition must be presented within forty days after the award (Section 30). An application for recall may be presented at any time during the course of the sequestration, provided nine-tenths in number and value of the creditors apply by petition to the Court of Session (Section 31). Further, if it appears to the court, upon a petition by the Accountant of Court or any creditor, or other person having interest, within three months from the date of the sequestration, that a majority of the creditors in number and value reside in England or Ireland, and that, owing to the situation of the property of the bankrupt and other causes, his estate should be distributed under the Bankruptcy

Laws of England or Ireland, the court may recall the sequestration (Section 43).

Effects of the Award. After the appointment of the trustee (at the first meeting of creditors), the trustee obtains confirmation of his appointment from the sheriff, the document evidencing his appointment being known as the *act and warrant* (*q.v.*) (Section 70). The effect of the award of sequestration and of the act and warrant is to make over to the trustees for behoof of the creditors the whole estate belonging to the bankrupt in which he has a beneficial interest or of which he can legally dispose. Real estate in England, Ireland, or in any of the British Dominions vests in the trustee to the same extent as would have happened if the bankruptcy had taken place in these countries (Section 97). The bankrupt's working tools and implements, however, are exempted from the sequestration. Any estate falling to the bankrupt before his discharge also vests in the trustee, who can complete a title to this by application to the court, which grants him what is known as a "vesting order." In the same way a *spes successionis* (right of expectancy) also vests in the trustee, who may, if he thinks it necessary, for the purpose of realising this asset, effect an insurance on the life of the bankrupt. Where the bankrupt is in receipt of what is known as an "alimentary allowance" (which is peculiar to Scots Law), the trustee is only entitled to this to the excess beyond a reasonable provision for the bankrupt's maintenance. The trustee is entitled to the portion of any salary, earnings or pension of which the bankrupt may be in enjoyment beyond what is necessary for his suitable maintenance (known as *beneficium competentiae*). Any money held by the bankrupt in trust does not fall within the sequestration.

Procedure Subsequent to the First Meeting of Creditors. After this meeting, the trustee obtains his act and warrant, and proceeds to ingather the estate and to make up an inventory thereof and a valuation (Section 76). He applies within eight days of confirmation to the sheriff to fix the date for the examination of the bankrupt and the date of the second statutory meeting of creditors. The bankrupt is examined by the trustee in private or, if the trustee so desires, publicly. The examination is made on oath (Section 78). At the second meeting of creditors the trustee submits a report with a statement of affairs and an estimate of the expected dividend. At this or subsequent meetings the trustee may be instructed as to the recovery and disposal of the estate or as to the management of the bankrupt's business, if the creditors decide to carry it on. If there is real property, the creditors may give the trustee directions with regard to its disposal (Section 92).

Realisation of Estate. Personal property is usually disposed of by private bargain and the Act is silent with regard to this, but the real estate is usually sold by public roup and sale (i.e. by auction). In this case the subjects are exposed by the trustee with the consent of the Commissioners and heritable creditors (mortgagees), if any. A mortgagee, however, if he proceeds without delay, may expose the property himself, but must account to the trustee for any reversion. A sale of real estate by private bargain requires the concurrence of a majority in number and value of the whole creditors, and the consent of the mortgagees and of the Accountant of Court (Sections 108–111). Where any estate is sold publicly, any creditor may purchase, but the trustee or commissioners, any law agent employed by the trustee, or partner of such law agent, is not entitled to purchase.

Claims and Payment of Dividends. To entitle a creditor to vote or draw a dividend, he must produce an oath or affidavit and the account and vouchers necessary to prove his claim. Accounts for goods supplied or work done must be detailed. Items such as "to goods" are not sufficient. Where debts are founded on a written document, e.g. a bond, or bill or lease, the document must be produced. In the case of a bank ranking on the estate of a customer, the claim is usually prepared by the bank's Head Office and in order that this may be dealt with the branch will advise the amount of the overdraft, with interest to date of sequestration, and forward the last Confirmation Letter, copy of the account from that date and the relative paid cheques or vouchers. Details of all securities held and values will also be given. *In claiming to vote*, the creditor must deduct the value of all securities held by him over the bankrupt's estate, and claims on co-obligants bound with, but liable in relief to, the bankrupt, and vote only in respect of the balance (Sections 55 and 56). *For ranking for a dividend*, the creditor deducts only the value of securities held by him over the bankrupt's estate (Section 61). As a protection against under-valuations, it is provided that the trustee may take over the securities at the value placed upon them for voting purposes

by the creditor, with an addition of 20 per cent (Section 58). Where the affidavit is used for ranking, the trustee may take over the security at the specified value (Section 61).

To enable a creditor to participate in a dividend, his claim must be lodged at least two months before the time fixed for the payment of the dividend (Section 119).

The trustee "adjudicates" (decides) upon claims, rejecting, admitting, or requiring further evidence as the case may be, his decision being made in writing (Section 123).

The first dividend is payable at the expiry of six months from the date of the award of sequestration (Section 126), the second dividend on the expiry of ten months from the said date, and subsequent dividends on the expiry of every three months from the date of payment of the preceding dividend (Sections 118 and 119). The trustee and commissioners, with the consent of the Accountant of Court, may accelerate the payment of any dividend, while the commissioners may postpone a dividend until the next statutory period (Sections 130 and 131).

Ranking of Claims. Claims are divided into the following classes—

(1) Preferable claims in the following order: (*a*) sequestration expenses; (*b*) expenses of diligence done by creditors; (*c*) death-bed and funeral expenses; (*d*) privileged debts under Section 118, which include rates and taxes, wages and salaries, and workmen's compensation.

(2) Ordinary claims.

(3) Contingent claims which must be valued by the Sheriff or the Trustee (Section 49).

Ordinary and contingent claims rank *pari passu* after preferable claims.

(4) Postponed claims, in which are included those by married women for funds lent to a husband and immixed with his funds, as for example on Deposit Receipt in joint names of husband and wife.

In ranking on a debtor's estate the following points should be noted—

1. In the case of a bill of exchange, if these mature before the date of sequestration, interest at 5 per cent would be added, but if it matured after the date of sequestration interest would be deducted from that date until the date of maturity.

2. In the case of partnerships, as the firm is in Scots Law a distinct legal persona, the firm's estate is separate from those of the partners. Creditors of the firm can rank first on the firm's estate to the exclusion of private creditors and thereafter rank, after deducting the amount they are entitled to receive from the firm's estate, along with the private creditors *pari passu* on the estates of the individual partners to the extent of receiving not more than 20s. in the £. Securities held by a creditor from one of the partners of a firm would not require to be deducted in ranking on the firm's estate.

3. In the case of a person carrying on a business under a firm name there is no distinction in ranking between trade and private creditors.

4. Where a creditor has as security an obligant bound with, but liable in relief to the bankrupt, e.g. a guarantor, in claims for ranking unlike those for voting, he need not value and deduct the obligations of such party in ranking upon the bankrupt's estate.

5. Where a guarantor for the bankrupt is liable to the creditor and such guarantor holds a security over the bankrupt's estate, the guarantor must account to the trustee for his security as if he had paid the creditor and thereafter rank under deduction of the security. For example, suppose a bank advances £100 to A, against a guarantee by B for this amount. B has received from A securities to the value of £60. A is sequestrated, and pays 6s. 8d. in the £. The bank will rank on the estate for £100, without deducting B's guarantee and will receive by way of dividend £33 6s. 8d. The bank will then call on B for the deficit of £66 13s. 4d. On the other hand, the bank may claim £100 from B and the latter will rank on A's estate for £100 less the security valued at £60 and receive by way of dividend £13 6s. 8d., his loss being £26 13s. 4d.

Assuming that the bank ranked on the estate, then A's trustee is entitled to demand from B the amount of the dividend paid by the estate to the bank on the value of the security held by B, viz. £60 at 6s. 8d. or £20, and it will thus be seen that the loss to the guarantor B is the same in both cases.

6. Where the creditor has several co-obligants bound for the same debt and some of the obligants are insolvent the creditor may—

(*a*) Rank for the whole debt on each of the insolvent estates, and call on the solvent obligants to pay any balance remaining up to the limit of their obligation.

(*b*) Call on the solvent obligants to pay the debt, leaving them to obtain relief from the insolvent estates. It may be noted that, while they may rank for the full amount paid

on the principal debtor's estate, they can only rank on the estates of the co-obligants for the excess beyond their *pro rata* share and from the point of the solvent obligants' method (*a*) is preferable. Where all the parties are insolvent, the creditor will rank on all estates for the full amount of the debt and in ranking on the estate of one obligant the creditor must deduct the amount of dividend already received from the estate of a co-obligant.

7. Payments received by a bank from a guarantor before sequestration, which is in effect payment or part payment of the principal debt and not as a kind of collateral security to the guarantee, must be deducted even although the amount has not been placed to the principal debtor's account. (*Mackinnon's Trustees* v. *Bank of Scotland*, [1915] S.C. 411.)

8. Where a bank holds ordinary trade bills in security of the debt and the principal debtor becomes bankrupt, the creditor can rank upon his estate for the full amount without deduction and thereafter call upon the parties to the bill to make good the deficiency. In the event of the parties becoming bankrupt, the creditor is entitled to rank on their estates for the full sum appearing on the face of the bills irrespective of the amount of his debt, but not exceeding 20s. in the £.

9. It is a general rule of bankruptcy law that the same debt cannot be ranked for twice on the same estates. This is important where a principal debtor and a guarantor are bankrupt. The creditor can rank on each estate but the trustee on the guarantor's estate cannot rank on the principal debtor's estate. Under the usual form of guarantee, the rights of a guarantor to rank on the principal debtor's estate are postponed until the whole debt to the bank has been paid. This rule of double ranking does not apply where the debtor is not sequestrated but compounds with his creditors.

10. Any securities pledged by third parties are not deducted when ranking on the estate of the principal debtor.

Discharge of Bankrupt. The bankrupt may be discharged by a *deed of arrangement* which is a means by which his estate may be wound up. It requires a majority in number and three-fourths in value of the creditors at a meeting and involves an application to the Court to stay the procedure of the sequestration for two months in order that the arrangement can be carried out. The deed of arrangement must be executed within this period and the Court declares the sequestration at an end (Sections 34 to 39).

The bankrupt may also be discharged on payment of a *composition*. The procedure is more complicated than in the case of a deed of arrangement, and requires certain statutory majorities. The arrangement must also be approved by the Court and is embodied in a composition contract. On the contract being approved by the Court, the sequestration is declared at an end and the bankrupt discharged and reinvested in his estate (Sections 134–142). If the composition under a composition contract is not paid, the original debt does not revive and the creditor's claim is for the amount of the composition only. Such a contract binds all creditors whether acceding or not.

The bankrupt may, on petition to the Court, obtain his discharge without composition if he has paid a dividend of at least 5s. per £, or proved that he is not responsible for his failure to do so. He requires the consent of varying majorities of the creditors according to the dates at which he presents his petition, up to the lapse of two years, after which he can obtain his discharge without the concurrence of creditors. It is always open to the Court to refuse the debtor's petition for discharge even although no creditor opposes (Sections 143–149).

Position of Undischarged Bankrupt. All acts done or deeds granted by the bankrupt after the date of the sequestration and before his discharge in relation to his estate, unless with the consent of the trustee, are null and void (Section 107). If an undischarged bankrupt obtains credit to the extent of £10 or upwards from any person without informing him that he is an undischarged bankrupt he is guilty of a crime and may be punished by imprisonment for a period not exceeding two years (Section 182). He is also disqualified from being elected a member of any local authority and cannot sit as a Member of Parliament.

Discharge of Trustee. After the final division of the estate the trustee calls a meeting of creditors and submits to them his accounts and list of unclaimed dividends and also the sederunt book (in which he records all matters connected with the sequestration). Following the meeting he lodges unclaimed dividends on deposit receipt in the bank and transmits to the Accountant of Court the sederunt book, accounts and deposit receipts, after which he petitions the Court for his discharge (Sections 142 and 143).

Summary Sequestration. This supersedes the old process of *Cessio Bonorum*. It is competent where the debtor's assets do not exceed £300. Where the bankrupt is the petitioner he must lodge with his petition a statement of his affairs and where the petition is by the creditors, the first deliverance contains an order on the debtor to lodge such a statement within six days. The petition may be presented by the debtor (who need not be notour bankrupt), without concurrence of any creditor, or by a creditor or creditors whose debts in all amount to £10 if the debtor is notour bankrupt within the previous four months. There is no provision for the summary sequestration of the estates of a deceased debtor. The forum is the Sheriff Court of the Sheriffdom within which the debtor resides or carried on business during the year immediately preceding the date of the petition. Where the petition is by the creditors, and they do not know which Sheriffdom is applicable, or where the debtor is furth of Scotland the petition is presented to the Bill Chamber of the Court of Session. At the second meeting of the creditors, if it appears that there are no funds, the trustee reports orally to the Sheriff, who may thereupon issue an order dispensing with further procedure. When a dividend is to be paid, the trustee must not less than 14 days prior to the second meeting of creditors adjudicate on claims. The trustee reports periodically to the Accountant of Court as to the state of the sequestration and on completion of the sequestration he issues a certificate stating that the trustee is entitled to be discharged. Summary sequestrations are not common. The simpler and less expensive procedure under a Trust Deed is adopted for small estates.

Extrajudicial Settlements. These are private arrangements by which the estates of insolvent debtors may be realised and divided among their creditors without resorting to the judicial process of sequestration. They are less expensive and entail a more rapid realisation of the estate as compared with sequestration, and usually take the form of a trust deed or a composition contract.

(*a*) **Trust Deed.** By a trust deed a debtor conveys his whole estate to a trustee for behoof of his creditors who ingathers his estate and divides it amongst the creditors according to the terms of the trust deed, which invariably incorporates the rules of ranking and division of the Bankruptcy Act. It is an essential condition of the arrangement that all creditors should be treated with perfect equality and also that all creditors should accede. In the event of any inequality, an acceding debtor may withdraw, which he may also do in the event of a non-acceding creditor acquiring a preference over the debtor's assets by diligence. A creditor, however, can only do diligence against these assets before they are reduced into possession of the trustee, after which diligence by the creditor is precluded. A non-acceding creditor's remedy is to apply for sequestration, which can always supersede a trust deed. On the other hand a non-acceding creditor may draw a dividend without acceding to the trust deed and wait an opportunity later to make good the balance of his claim. Acceding creditors draw a dividend and that discharges their claim.

A committee of creditors is usually appointed to act along with the trustee and it is their duty to audit his accounts and fix the commission. If this is not done by the Committee, it must be done by the Accountant of Court.

(*b*) **Composition Contract.** In this case the debtor enters into an arrangement with his creditors by which he is to pay them a composition in full discharge of the debts. Differing from a trust deed, such an arrangement does not divest the debtor of his estate. The terms of this contract, which is a voluntary one, vary according to circumstances. Usually the composition is payable by instalments, bills for these being granted to the creditors. Security for payment of the composition is usually provided. On the failure to pay the composition or an instalment, the whole original debt revives. An extrajudicial composition contract does not bind non-acceding creditors. In both of these ways it differs from a composition contract in a sequestration.

Banks, as a rule, do not accede to Trust Deeds and composition contracts as by doing so they may discharge any guarantors on the debtor's account. This arises because of Section 9 of the Mercantile Law Amendment (Scotland) Act, 1856, which states—

"From and after the passing of this Act, where two or more parties shall become bound as cautioners for any debtor, any discharge granted by the creditor, in such debt or obligation to any one of such cautioners without the consent of the other cautioners, shall be deemed and taken to be a discharge granted to all the cautioners; but nothing herein contained shall be deemed

to extend to the case of a cautioner consenting to the discharge of a co-cautioner who may become bankrupt."

The Act does not apply to *sequestration* as under Section 52 of the Bankruptcy (Scotland) Act, 1913, it is provided that no act of the creditor in voting and drawing a dividend or in assenting to the discharge of the bankrupt, or to a composition, discharges a co-obligant of the debtor. In the case of a trust deed or other extrajudicial settlement, the bank should if possible obtain from the guarantors Letters of Accession agreeing to the bank's ranking and drawing a dividend on the estate. If this consent cannot be obtained then the bank should state in the receipt for the dividend from the bankrupt's estate that all rights are reserved against any co-obligants.

BILLS OF EXCHANGE. There are not many differences between the laws of Scotland and England as regards Bills of Exchange, as the laws of these two countries have been closely assimilated by the Bills of Exchange Act, 1882. The main differences are as follows—

In Scotland, by Section 53 (2) where the drawee of a bill has in his hands funds belonging to the drawer available for the payment thereof, the bill operates as an assignment of the sum for which it is drawn in favour of the holder from the time when the Bill is presented to the drawee. The effect of this is most commonly seen where payment of the cheque has been countermanded by a customer. In Scotland the banker cannot honour the cheque till the dispute has been adjusted. He must retain the funds and cannot pay even his own customer until settlement. In such a case, failing agreement, it is the holder's duty to raise an action in Court to determine to whom the funds properly belong. Similarly, where a banker has insufficient funds in his hands to meet the bill or cheque the presentation of the cheque operates as an assignment on behalf of the presenter, and the practice of banks is to transfer the amount standing at the credit of the customer to a separate earmarked account to await a settlement between the parties. If, however, the holder offers to deliver up the cheque, the banker must pay over the funds in his hands.

A holder of a bill, but not a cheque, is entitled to summary diligence (*q.v.*).

Like other contracts in Scotland, consideration need not be given for a bill of exchange.

Reference should be made to the article BILLS OF EXCHANGE in the Dictionary.

BLANK TRANSFER. In Scots Law there cannot be an equitable mortgage and although blank transfers are sometimes taken, the security has certain disadvantages. A blank transfer is one signed by the transferor, but blank in the space for the name of the transferee, and usually blank as regards the amount of the consideration and the date of execution. The bank as lender could either fill in the name of the bank's nominee company as transferee, insert five shillings or other nominal consideration and proceed to register the transfer, or sell the shares. The following are the disadvantages of accepting blank transfers along with the relative certificates, as security—

(*a*) The customer may advise the company that he has lost his share certificate, obtain a duplicate under the usual indemnity, and then either sell or pledge the shares.

(*b*) The company may not register the bank's transfer when presented, e.g. the company may have a lien over the shares or an arrestment may be lodged.

(*c*) A blank transfer is not a deed, and if the company requires a deed, such as companies incorporated under the Companies Clauses (Consolidation) Act, 1845, the effectual right to the shares has not been acquired. This point was commented on in one Scottish case but no ruling was given. There are, however, many English cases dealing with this point.

(*d*) In Scots Law, it is possible that a blank transfer may come under the Act of 1696, c. 25, which declares void all instruments delivered in blank in the name of the grantor, although it excepts writings *in re mercatoria*.

(*e*) In the event of the customer's bankruptcy, a Trustee may intimate his title before the bank, but remember that a bank may register after sequestration and obtain a good title provided he does so before the Trustee. (*Morrison* v. *Harrison* (1876), 3 R. 406.)

(*f*) Finally, where the transfer is undated and the customer is sequestrated, and the bank registers within six months of bankruptcy, it *may* be held that the registration was reducible under the Bankruptcy Act (Scotland), 1696, c. 5, and the Companies Act, 1947.

CAPACITY TO CONTRACT. (See LUNATICS, MARRIED WOMEN, MINORS AND PUPIL'S in this Appendix.)

CASH CREDIT BONDS. Cash Credit Bonds are a feature peculiar to Scottish banking and were introduced by the Royal Bank as long ago as 1728, but their place is now being taken by the simpler and more modern Letter of Guarantee. A Cash Credit Bond is a cautionary obligation in favour of a bank for payment of advances made by it to a customer, or for the customer's operations on a cash account, i.e. a credit allowed to a person named, in virtue of which he may draw cheques on the bank and operate on the account as if the customer actually had the money deposited in the bank. This engagement is undertaken by a bond in which the account and all the operations on the credit are stated to be in the name of the person for whose benefit the credit is provided, while he and his cautioners are all bound jointly and severally as principals. Although the customer and the cautioners sign the bond, the customer is really the principal debtor and the other parties are cautioners for him although they have not all the rights and privileges of the latter. For instance, the cautioners have no right to the benefit of discussion and the septennial prescription does not apply. They have, however, a right of relief against the principal debtor and a claim for a rateable contribution from any co-cautioners. The main advantages of cash credit bonds as compared with guarantees is that the bond may be registered and summary diligence may be used for the amount of the balance; and the death of a cautioner will not discharge his estate from liability for advances made by the bank to the principal debtor after the date of his death. In *British Linen Company* v. *Monteith* (1858), 20 Dunl. 557, it was held that there was no obligation on the bank to give notice of a cash credit bond to the representatives of a deceased cautioner. The stamp duty on a cash credit bond is 5s. per cent.

CAUTIONARY OBLIGATIONS. This is known in England as suretyship or guarantee. Since the passing of the English and Scottish Mercantile Law Amendment Acts of 1856, there are few differences. It should be noted that by Section 6 of the Scottish Act the guarantee must be in writing and subscribed by the person undertaking the obligation or by some person duly authorised by him, whereas the English Act requires the contract to be signed by the guarantor himself. It should be also noted that certain bonds of caution (or guarantees) may cease to have effect after 7 years from their date. This is known as the septennial prescription (or limitation). Cautionary obligations to which this septennial limitation does not apply are (1) those in which the term of payment is beyond 7 years; (2) those in marriage contracts; (3) those for payment of an annuity or interest upon loan; (4) mercantile or other guarantees; (5) bonds of caution for discharge of an office and judicial bonds; (6) bonds for composition in bankruptcy; (7) bonds for mutual relief; (8) bonds guaranteeing a sum already lent; (9) bonds executed in a foreign country; and (10) Cash Credit Bonds.

Further, in Scotland the discharge of a cautioner requires to be proved by the writing or oath of the creditor, while in England it may be proved by parole evidence.

CLEARING SYSTEM. Note Exchanges. A note exchange is held in every place where there are more than two banks. The exchange meets daily, usually from 9.30 to 10 a.m., except on Mondays when there is no exchange.

As from 1st November, 1946, note exchanges are held as follows—

Edinburgh—on Tuesday, Wednesday, and Thursday mornings, and Friday afternoons.

Glasgow—on Tuesday, Wednesday, Thursday, and Friday mornings, and Friday afternoon.

Elsewhere—on Tuesday and Thursday mornings, and on Friday afternoon.

In the case of the country branches, settlement is effected for amounts of £500 or upwards by exchange settlement vouchers on Edinburgh and, when the balances are below £500, local exchange vouchers are issued, these vouchers bearing the clause "to be accounted for at next exchange." At the Edinburgh note exchange the differences are settled by debiting or crediting the clearing house, except at the Friday afternoon exchange when the settling bank gives and receives exchange vouchers for the respective balances, including in the amount of the vouchers one day's interest at the current deposit receipt rate.

Clearing House. In July, 1943, many fundamental changes were introduced in the system of clearing and negotiating Scottish cheques, and in the method of settlement. Branches of the banks in Scotland have since cleared or exchanged *locally* all Scottish cheques on other banks represented in the same town, no matter where payable. Where the paying bank is not represented in the same town, the collecting bank must forward

the paying bank's cheques direct to the principal Edinburgh office of the collecting bank. The bank, receiving through the clearing or from its own customers, cheques drawn on its own offices except local branches forwards such cheques to its principal Edinburgh office for distribution to the branches drawn on, except in the case of cheques drawn on the principal Glasgow office, when these cheques are sent direct to that office.

If for any special reason it is desired to remit a cheque direct to Edinburgh or Glasgow, this may be done.

In every town where *three or more* banks are represented and there is no established clearing house, the banks act in monthly rotation as settling banks. The time of clearing is as mutually arranged, but must not be later than 12 noon. In a country town where only two banks are represented, only one collection of cheques should be made each day, not later than 12 noon.

A dishonoured cheque must be returned, without delay, direct to the branch bank whose stamp it bears, and a debit voucher must be passed against that bank through the local or Edinburgh Clearing House.

Cheques and other documents passed through the Clearing House or presented to other banks must have the name of the presenting branch clearly impressed upon them.

Cheques negotiated for Irish banks must be impressed with the clearing stamp, which includes the date of the clearing.

Where the amount is £500 or under, *settlement* of the note exchange and clearing is effected by an interim Exchange Voucher, to be exchanged at the next clearing; and where the amount is above £500, by an Exchange Settlement Draft on the bank's principal Edinburgh office.

On Friday afternoons the balance, irrespective of amount, should be settled by Exchange Settlement on Edinburgh. In towns having no clearing house, cheques and other documents presented by the banks to one another shall be paid for by Exchange Voucher to be included in the next Note Exchange. Where the amount of a document exceeds £3,000, settlement should be effected by Exchange Settlement on Edinburgh.

The Edinburgh Clearing House opens daily except Saturdays and local holidays at 1 p.m.; on Saturdays at 10.45 a.m. and local holidays at 10 a.m. The documents which may be cleared are: (*a*) demand documents (i.e. cheques, deposit receipts, drafts, clearing house vouchers and exchange vouchers) payable at the banks in the Edinburgh area; (*b*) bills domiciled with the chief offices of the banks in Edinburgh (Bills domiciled at town branches must be collected by messenger); (*c*) documents payable elsewhere in Scotland where the clearing bank has not a branch. Provision is also made for presentation to the chief offices of documents prior to the clearing hour and these are known as "packets," the time of presentation being 10 a.m. (9.30 a.m. on Saturdays). The totals of the "packets" are carried forward to the clearing. Rules are also provided for the returning of cheques, etc., the settlement of which is effected by passing a debit through the clearing house on the following day against the bank receiving the returned document. On Tuesdays, Wednesdays, Fridays, and Saturdays, the settling bank (i.e. either the Bank of Scotland or the Royal Bank) gives to the creditor banks or receives from the debtor banks exchange vouchers which are brought in to the next clearing and bear interest at deposit receipt rate (which is included in the voucher) from the date of issue to the date of the next clearing. On Mondays and Thursdays a general settlement is held at about 12.30 p.m. Included in Monday's settlement are the notes of Thursday and Friday, the large notes of Saturday, and the Glasgow and Country Exchanges of Saturday and the Edinburgh clearings of Friday, Saturday, and Monday. Thursday's settlement includes the small notes of Saturday, all notes of Monday, Tuesday, and Wednesday, the Glasgow and Country Exchanges of Wednesday, and the Edinburgh clearings of Tuesday, Wednesday, and Thursday. At the general settlement, the arrangement regarding the payment of balances is that the largest debtor pays the largest creditor bank and if the largest debtor bank has a surplus left, it is applied towards payment of the second largest creditor who, in turn, receives any remaining balance from the second largest debtor. The reason for this system is that if any bank defaulted, the loss would be more equally distributed. The statement below illustrates how the settlement is effected.

The debtor banks will instruct their London offices or their London correspondents to pay to the creditor banks four days later the sum required for the settlement. Four days' interest at deposit receipt rate is added to the amounts due and if the fourth day is a bank holiday in London, payment is postponed until the first business

day thereafter, and additional interest is added. It will thus be seen how the intricate clearing system finally terminates with settlement in London.

COMPANY LAW. The Companies Act, 1948, applies alike to England and Scotland, and on the whole there is not much difference between the laws of the separate countries. The main differences are these—

Registration of Charges. While it is necessary that the charges specified in Section 95 should be registered with the Registrar of Companies in the case of companies whose registered office is situated in England, it is not necessary that charges should be registered by Scottish companies. If, however, the charge comprises property situate in Scotland, the deed constituting such charge, if granted by an English company, must be registered with the Registrar in terms of this section.

Floating Charge. This is incompetent in Scotland, as it is impossible to create a valid security over moveables unless these are in possession of the creditor. When, however, an English company has created a floating charge over Scottish assets, so long as the parties concerned are found in England, the English Court often decides questions relating to such property in disregard of Scots Law, but this is not always effective as an ordinary creditor in Scotland of an English company may proceed to arrest debts due to the Company in the hands of Scottish debtors to the Company in face of the English Receiver who may have been appointed to attend to the interests of debenture holders. Similar to the floating charge is the case of a charge over ordinary uncalled capital in favour of debenture-holders which is equally ineffective in the case of a Scottish Company except in very special cases. In these excepted cases, unless notice of the debentures has been given to the shareholders, creditors may arrest the uncalled capital.

Trusts. It is competent to enter on the register of Scottish companies notice of trusts. This has the advantage of acting to some extent as a protection against fraudulent breach of trust.

Liquidation. There are considerable differences of procedure in English and Scottish liquidations. The liquidator is not an officer of the Court as the Official Receiver is, and he is not responsible directly to the Board of Trade. Liquidations are of three kinds: (*a*) by the Court, (*b*) voluntary, or (*c*) subject to the supervision of the Court. It is in compulsory liquidations that the differences chiefly arise.

(*a*) The jurisdiction to wind up a company, registered in Scotland lies with the Court of Session, but where the amount of the share capital of a company paid up or credited as paid up does not exceed £10,000, the Sheriff Court of the county in which the registered office of the company is situate has concurrent jurisdiction with the Court of Session (Section 220). As in England the procedure is by way of a petition. The Court appoints a liquidator who is a private individual. The appointment may be at first provisional and this appointment may be confirmed later by the Court or a new liquidator appointed. The

TO BE PAID ON ..(4 *Days later*).....

STATE OF EXCHANGE, EDINBURGH.....*Date of Settlement*.....19.....

Drafts received in Settlement				Balances in favour			BANKS	Balances against			Drafts given in Settlement			
Banks	Amounts										Amounts			Banks
	£	*s.*	*d.*	£	*s.*	*d.*		£	*s.*	*d.*	£	*s.*	*d.*	
							Bank of Scotland .	90,462	12	9	90,462	12	9	Nat.
							Royal Bank . .	87,230	12	3	50,605	6	7	Nat.
B. of S. .	90,462	12	9								36,625	5	8	Clyde & North
Royal .	50,605	6	7				British Linen Bank .	20,641	10	7	20,641	10	7	Clyde & North
Comm. .	182,738	2	1				Commercial Bank .	182,738	2	1	182,738	2	1	Nat.
Union .	388,351	6	7	712,157	8	–	National Bank. .							
B. L. .	20,641	10	7				Union Bank . .	388,351	6	7	388,351	6	7	Nat.
Royal .	36,625	5	8	57,266	16	3	Clydesdale & North Bank . . .							
				£769,424	4	3		£769,424	4	3				

.....*Settling Clerk.*

Court determines the security to be given by the liquidator on his appointment. The liquidator is called the "official liquidator" of the particular company in respect of which he is appointed and not by his individual name. If, and so long as, there is no liquidator all the property of the Company is deemed to be in the custody of the Court (Section 243).

In a compulsory winding up, if execution had been levied by a creditor within sixty days of the winding up, it was invalidated by the winding up in Scotland, but in England the winding up order has no such retrospective effect.

The powers of the liquidator (Section 245) are the same in Scotland as in England, but the Court may provide by an order that, where there is no Committee of Inspection, the liquidator may exercise certain powers without the sanction of the Court. A liquidator has, subject to general rules, the same powers as a trustee on a bankrupt's estate. Prior to 1929, it was not competent in a compulsory winding up to appoint a Committee of Inspection in Scotland. This is now provided for (Section 252) and the Committee of Inspection has, in addition to the powers and duties conferred upon it by the Act, such of the powers and duties of Commissioners on a bankrupt's estates (*q.v.*) as may be conferred on Committees of Inspection by general rules. (Section 255.)

The Court has power to require the attendance of any director or officer of the company at any meeting of creditors or contributories or a Committee of Inspection to give information as to the affairs of the company. (Section 269.)

In Scotland the Court, on production by the liquidator of a list certified by him of the names of the contributories liable in payment of calls and of the amount due by each contributory and of the date when the amount due by each contributory and of the date when the amount became due, may immediately pronounce decree against these contributories for payment of the sums so certified with interest at 5 per cent per annum till payment, as if they had consented to registration for execution on a charge of six days of a legal obligation to pay calls and interest (Section 275). (See SUMMARY DILIGENCE in this Appendix.)

(*b*) **Voluntary Winding Up.** The Court may direct that 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 (Section 308).

In *all* windings up, the winding up has the same effect of cutting down diligence as a sequestration has in the case of an individual and this applies to estate in Scotland belonging to an English company.

The liquidator must in the case of a company which is about to be dissolved, lodge all unclaimed dividends and unapplied balances in a joint-stock bank on deposit receipt in name of the Accountant of Court, to whom the deposit receipts are transmitted.

COMPENSATING INTEREST. This arises where a customer has several current accounts, some with debtor and some with creditor balances, the customer paying interest only on the net debit balance. In Scotland, the following regulations are applied regarding the allowing of compensating interest—

1. In no case can compensating interest be allowed without the authority of Head Office.

2. No compensating interest can be allowed on a creditor as against a debtor balance except in cases where the bank is legally entitled at any time and without notice to apply the credit in payment of the debit.

3. No compensating interest can be allowed where the credit sum is on deposit receipt or savings account, except in the special case of (9).

4. No compensating interest can be allowed where the advance is on a loan account for a fixed period.

5. No compensating interest can be allowed between an ordinary account and one in the same party's name denoting a trust.

6. No compensating interest can be allowed between the creditor balance of a principal and the unauthorised overdraft of a factor or agent.

7. No compensating interest can be allowed between the accounts of a partner and his firm, unless the partner is a sole partner.

8. No compensating interest can be allowed on the "dividend" or "interest" accounts of a limited company against an overdraft on its ordinary account.

9. On advances to executors or solicitors of deceased customers against any balance at credit of deceased, no interest is charged if the advance does not exceed the deceased's credit on current account. Where the credit is on deposit receipt or savings account,

interest on the advance is charged at deposit or savings account rates. On any excess not less than Cash Account rate is charged. This privilege is limited to two calendar months from the date of the advance, and thereafter not less than Cash Account rate is charged on the whole advance.

10. As regards the accounts of public bodies, e.g. County Councils, it is left to the discretion of each bank whether or not compensating interest should be given.

COMPENSATION. "Compensation applies," says Erskine, "where the same person is both debtor and creditor to another. The mutual obligations, if they are for equal sums, are extinguished by compensation; if for unequal, the lesser obligation is extinguished, and the greater diminished as far as the concourse of debt and credit goes." Compensation is in the nature of a security right in so far as it gives a creditor a right to receive full payment of his debt as against the other creditors to the extent of the claim for compensation. In England the equivalent term is known as "set-off." The following are the rules of compensation which relate particularly to banking—

1. Compensation does not operate *ipso jure*. It must be pleaded by way of defence, and it must be pleaded before decree in the action has been pronounced.

2. Each of the parties must be debtor and creditor at the same time and in his own right. Thus, a bank could not set-off a debit balance in name of "A.B." against a credit balance in name of "A.B. as Trustee for C.D.," the reason being that there is no mutuality of debt and credit or no *concursus debiti et crediti* between the parties.

3. The mutual debts must be of the same quality, i.e. both debts must be actually due and exigible at the date when the plea is set up. Hence a future or contingent debt cannot be pleaded in compensation of a debt presently due and liquid and a banker could not set-off a credit balance against a bill not yet due. This rule only applies where one of the parties is solvent as compensation may be pleaded where one of the parties is bankrupt or *vergens ad inopiam*.

4. Special rules apply where a firm is concerned. A debtor of a firm cannot plead compensation against the firm in respect of a debt due to him by a partner of the firm in his individual capacity. This rule also applies in the bankruptcy of the firm but if the firm is dissolved for a reason other than bankruptcy, each partner has a proportionate interest in the assets of the firm and a debtor of the firm who is also a creditor of one of the partners may plead compensation.

5. It is a general rule that specific appropriation bars a plea of compensation. A banker has the right, however, to set-off a sum on deposit receipt or savings account against a debit balance of a customer. It was decided in *Anderson* v. *North of Scotland Bank Ltd.* (1901), 4 F. 49, that banker who has granted a deposit receipt payable to either of two persons or the survivor of them cannot plead compensation in respect of a debt due by one of them.

COMPOSITION CONTRACT. (See BANKRUPTCY in this Appendix.)

CONFIRMATION. An executor, whether nominated in the will or appointed as executor-dative, requires to have his title confirmed before it is universally good. Confirmation is a sentence or decree obtained in the Sheriff Court of the County in which the deceased was domiciled at death empowering the executor to collect and distribute the estate of the deceased. Confirmation is always on an inventory together with the giving of security in the case of an executor-dative. Where an executor is nominated in the will, the property vests in him without confirmation, confirmation merely completing his title. There is no proof of the will as in England.

The Confirmation, which in form is the same whether it is in favour of an executor-nominate (i.e. executor named in deceased's will) or of an executor-dative (i.e. executor appointed by the Sheriff on Petition, in case of intestacy or where the will makes no appointment), contains a full inventory of the *moveable* estate, unlike a Probate which refers only to a gross amount. Scottish, English, and property situated elsewhere are shown separately, and before a confirmation can be exhibited to an English company, it must be resealed by the English Probate Office, just as an English Probate must be resealed in the Scottish Court before being utilised in connection with Scottish Estate. (See EXECUTOR in this Appendix.)

If an executor discovers that any part of the estate has been omitted or undervalued, he may by an *eik* have the same confirmed in addition to the estate already confirmed. Where a customer dies domiciled in England presentation of probate or letters of administration has the same effect as confirmation, provided that a certificate has been indorsed by the Commissary Clerk to the effect that it has been produced in the Sheriff Court of

the County of Edinburgh. In the case of small estates (on which no estate duty is payable) a bank usually dispenses with confirmation and pays the balance due to the legal representatives, taking its discharge (and in some cases the guarantee of an approved person or an insurance company) and an undertaking to expede confirmation if and when required.

CONSIGNATION RECEIPT. In Scotland, when property is sold under powers contained in a "bond and disposition in security" (*q.v.*), the creditor who has sold the property must, after satisfying his own claim, place any surplus there may be in a bank upon deposit receipt, called a consignation receipt, in the joint names of the seller and purchaser, for the benefit of the person who is entitled to the surplus.

COURTESY. (See WILLS AND SUCCESSION in this Appendix.)

COURTS. The Supreme Court in Scotland is the Court of Session. It sits in Edinburgh and consists of two branches known as the Inner House and the Outer House, and the former is divided into two sections known as the First Division and the Second Division. Appeals may be made from the Court of Session to the House of Lords. The Sheriff Court, which in practice decides most commercial disputes, does not deal with questions of, say, divorce or the appointment of judicial factors, unless the value of the estate is under £100. The Sheriff Court has extensive jurisdiction in the case of sequestration, and has jurisdiction to wind up limited companies where the paid-up capital does not exceed £10,000. The Small Debt Court is available for actions where the amount involved does not exceed £20. There is also the Justice of the Peace Small Debt Court which deals with cases where the amount involved does not exceed £5.

DECREE. (See ACTION in this Appendix.)

DEED OF ARRANGEMENT. (See BANKRUPTCY in this Appendix.)

DEEDS, EXECUTION OF. In Scotland a deed may be either wholly written, printed, engraved, or typewritten, or partly in one or partly in another of these ways. The granter must sign each page of the deed before two witnesses who sign only on the last page, each adding the word "witness" to his signature. Where there are two or more granters, two witnesses are sufficient if these granters sign at the same time, but where the granters sign separately, the witnesses must attest each signature separately, even though there be the same witnesses to each signature. A witness should be above the age of 14 years and not be interested in the deed. As a matter of practice, a wife should not witness her husband's signature. The witnesses must see the granter sign or hear him acknowledge the signature to be his.

At the end of the deed a space is left blank to be filled up after execution, with the following particulars: (1) Place and date of subscription; (2) names and designations of the witnesses; and (3) reference to any alteration or addition to the deed. It is also competent, instead of designing the witnesses in the testing clause, to add to the signatures of the witnesses, their designations.

A granter signs by his usual signature, and a married woman may subscribe her maiden name, though this is unusual.

Under the Companies Act, 1948, a deed may be validly executed according to Scots law if sealed with the common seal and subscribed by two directors or by a director and secretary. No witnesses are required.

The provisions for the execution of deeds by persons who, being blind, or from infirmity, or from any other reason, are unable to write, are governed by the Conveyancing (Scotland) Act, 1924, Section 18. If a person is unable to write, a deed may be signed for him by a Law Agent or Notary Public, or Justice of the Peace, in the presence of two witnesses, who attest to having been present when the deed was read over to the granter and heard or seen authority given to the Law Agent, Notary, or Justice to subscribe the deed. The docket must be holograph, and the witnesses also subscribe the docket. In testamentary writings a parish minister or his assistant may act as the Notary in his own parish.

Any marginal additions to a deed should also be authenticated by the signature of the granter, and, like alterations, be referred to in the testing clause.

Deeds signed and attested or witnessed in the above manner are called *probative*. A probative document is one which in consequence of its being attested or holograph does not require to be proved genuine by extrinsic evidence, as it contains within itself sufficient evidence of the agreement of parties so that a Court of Law will enforce the obligations therein set forth without requiring any other evidence. There are three kinds of probative writings: (*a*) Attested writings (as above), (*b*) holograph writings, and (*c*) privileged writings.

A *holograph writing* is one which is wholly,

or in the essential parts, written by the granter in his own handwriting and subscribed by him. It does not require to be attested by witnesses, but, if it is not declared in the writing that the document is holograph, that fact must be proved by extrinsic evidence. Accordingly the granter of a holograph document should always take care to declare that the document is written by him in his own hand. Alterations should be initialed. Where a document is not written by the granter, he may make the document holograph by adding in his own handwriting the words "adopted as holograph" before his signature.

Privileged writings are those in which the ordinary rules of attestation or authentication are dispensed with. They are valid if subscribed and include all writings in *re mercatoria*. Under this privilege are included orders for goods, bills, notes, and cheques, mandates, guarantees (but not bank guarantees) receipts for money or goods, or rent, and, in general, all the variety of letters and documents required in the unlimited engagements of trade. It is obvious that solemnities would be out of place in ordinary negotiations of trade where haste and expedition are so often necessary.

Improbative writings are those which, in themselves, are not sufficient evidence of the transactions to which they refer. They must be supported by other evidence before they can be enforced by the Court.

It should be noted that sealing is not required in Scotland except in the case of deeds executed by a corporation and transfers of shares. The latter are signed in Scotland before one witness in the same manner as in England, except where a Company has its own regulations.

Where an English deed is to be executed in Scotland it may be done in the English fashion provided the contract is to be carried through in England, but, if the deed in any way relates to Scottish heritage, it should be subscribed before two witnesses, as in the Scottish manner.

DEPOSIT RECEIPTS. This subject is dealt with fully in the Dictionary. In the event of a sum on deposit receipt in joint names being arrested as belonging to one of the parties, the bank should not pay the other party until the ownership of the money is judicially decided.

DISPOSITION. (See HERITABLE SECURITIES in this Appendix.)

EXECUTOR. An executor may be described as a judicial trustee for the collection and distribution of the moveable estate of a deceased individual, such distribution to be according to law and testamentary disposition, if any. Unlike the English executor, the title covers the case of an administrator in intestacy.

An executor appointed by will or testamentary disposition is called an executor-nominate, whilst one appointed by the courts is an executor-dative. In the case of an executor-nominate, his right to succession is complete with his appointment, and his title becomes universal by confirmation (*q.v.*). The persons, taken in order, who are entitled to administrate the estate of a deceased person are the executor-nominate, having first claim, and then (*a*) universal disponees, (*b*) residuary legatee, and (*c*) next-of-kin jointly in the same degree, as executor-dative. Executorship in Scots Law is in no way representation but an office, and responsibility extends only to the extent of the inventory. Further, it is not a trust except in relation to those having an interest in the executry. Creditors cannot look to the executor as a trustee, although beneficiaries may. The executor is not bound to pay ordinary debts until six months after the death of the deceased. Some debts, however, are privileged, and the creditors are entitled to payment in respect of them without decree or without waiting the preliminary six months. These debts are death-bed and funeral expenses; one year's rent; the wages of servants, where paid annually then for one year, but usually for the current term, week, month or quarter.

The office of executor is personal, and does not pass to the executor's executor on the former's death. The Court would, in such case, appoint an executor-dative *quoad non executa*. At the end of the administration, no formal exoneration is necessary, and where claims are made by creditors after the due administration of the estate, the executor may in an action against him plead that lawful payments have exhausted the estate. (See CONFIRMATION, EXECUTOR-CREDITOR in this Appendix.)

The necessary precautions when making advances to executors are discussed in the Dictionary.

EXECUTOR-CREDITOR. As in English law, where those entitled to administer fail to respond, any creditor may apply to the court for permission to administer so much of the deceased's estate as will be sufficient to discharge his liability to the creditor

applying. Thus, if the next of kin fail to apply for confirmation of title, on application of a creditor a decree dative will be made and afterwards confirmed. This type of confirmation is really in the form of a diligence. (See EXECUTOR in this Appendix.)

FRAUDULENT PREFERENCES TO CREDITORS. A fraudulent preference is the preferring or favouring of one creditor over another. At Common Law such preferences may be challenged by any creditor who is prejudiced and also by the trustee in the debtor's sequestration. The following, however, are exceptions—

1. Cash payments, made by the debtor in discharge of debts which are really due. It has been held (*Carter* v. *Johnston*, 1886, 13 R. 698) that where a bankrupt indorsed cheques, on which he was the payee to a creditor, in payment of a debt already due, within sixty days of bankruptcy, the transaction was reducible as being neither a payment in cash nor a transaction in the ordinary course of business.

2. Transactions in the ordinary course of trade. A banker is entitled in the ordinary course of business to discount a bill up to the date of bankruptcy provided the transaction is *bona fide*.

3. *Nova Debita* (New Debts), i.e. obligations undertaken in return for some kind of real value received.

In addition to the Common Law, the Scots Act, 1696, cap. 5, also deals with fraudulent preferences. This Act declares all voluntary dispositions and assignations granted by a debtor at or after notour bankruptcy, or within sixty days prior thereto, in favour of a creditor for his satisfaction or further security in preference to any other creditors, are null and void. An example would be where security is given within the sixty days to a creditor previously unsecured. In some cases advances are given against the deposit of title deeds accompanied by a letter undertaking to convey the subjects on the bank's request. It would be a fraudulent preference if the bank acting on this authority called on the debtor to dispose the subjects. On the other hand, where the creditor has obtained a valid security from the debtor, the Act of 1696 does not prevent the creditor from completing his title to the security within the sixty days. As Goudy says, "The rule laid down was that where prior to the sixty days a conveyance, whether absolute or in security has been granted in fulfilment of a contract, and something remains to be done by the grantee to complete it—such as taking infeftment or giving intimation—the performance of this act within the days of bankruptcy will not be challengeable. The principle on which decisions in cases of this kind proceeded is that the completion of the conveyance was a matter within the creditor's own power, and cannot therefore be said to have been done voluntarily by the bankrupt."

The Companies Act, 1947, Section 115, alters the period of sixty days to six months.

GRATUITOUS ALIENATIONS. At Common Law, any donation or gift made by an insolvent debtor may be challenged by any of his creditors, prior or posterior to the transaction or by the trustee in the debtor's bankruptcy. A creditor in order to challenge competently must prove (1) that the transfer was gratuitous or that the consideration was materially inadequate, (2) that the debtor was insolvent at and subsequent to the date of the alienation and at the date of challenge and, (3) that the alienation was prejudicial to lawful creditors. It is often difficult to comply with these essentials and the Scots Act, 1621, cap. 18, strikes at alienations of property or goods made by an insolvent person to conjunct and confident persons without true, just, and necessary cause, and without a just price really paid. Conjunct persons include near relatives, such as parents, children, brothers, sisters, nephews, nieces, sisters-in-law and brothers-in-law and the term has been held to include persons about to be married. A confident person is one standing in a confidential relationship with the insolvent, for example, a law agent, servant, partner or private secretary. Under the Act of 1621, the challenger must prove that the granter is insolvent at the date of challenge and that the receiver is a conjunct or confident person. The effect is that the burden of proving either the onerosity of the alienation or that the granter was solvent at the time of the transaction rests with the debtor.

HERITABLE SECURITIES. In Scotland no security can be obtained over heritable property by a mere deposit of title deeds. It is necessary for the lender to obtain a legal property right either absolutely or in security, over the subjects, and there are three methods of constituting a valid mortgage over heritable property in Scotland—

(1) **Bond and Disposition in Security.** A

statutory form is provided for in the Titles to Land Act, 1868. It consists of an acknowledgment of indebtedness, with a personal obligation to repay the loan; for payment of interest at a rate to be specified; and a disposition of the property in security of the personal obligations. The deed gives the lender power to sell the property in satisfaction of the debt in the event of the borrower making default in payment. The Bond includes a clause consenting to registration for execution, which enables the creditor to convert the Bond, without notice to the borrower and within a very short time, into a Court decree which has annexed a warrant enabling the creditor to do summary diligence at once. The creditor may, if there are tenants, intimate his Bond and enforce payment to him of rents, grant leases up to seven years in duration, and generally to take over the management of the property. The creditor may raise an action of Maills and Duties, and obtain a decree authorising him to enter into possession of the security subjects. The process is competent on default by the debtor in payment of principal or interest, or on his bankruptcy.

If the debtor is in possession himself under the Heritable Securities Act, 1894, he can be ejected as a squatter on his own property, and the subjects leased by the creditor. Moreover, the creditor has preferential rights over his debtor's moveable assets, e.g. machinery, if these can be attached under the diligence *poinding of the ground*, which gives a preference over an ordinary poinding and in competition among various heritable creditors, a preference according to the date of recording of the Bond. Its effect is to attach the creditor's preference over moveables belonging to the debtor or other proprietor actually on the ground of the security subjects and also the moveables belonging to tenants, but in the latter case only to the extent of the rents due and current. It covers the principal and interest due to the heritable creditor, and also current interest, but this cannot be demanded until the stipulated date of payment arrives. The creditor's claim is postponed to (*a*) Imperial Taxes and Local Rates, and (*b*) the Superior's claim for feu duty. Like the remedy of maills and duties, the poinding can be used even after sequestration or liquidation, but the creditor's claim is limited by statute to the interest on the debt for the current half-yearly term, and for arrears for one year immediately before the commencement of such term, unless his poinding has been carried into execution by sale six months before the date of sequestration.

The Conveyancing (Scotland) Act, 1924, provides for the manner in which the security is to be realised. A notice calling up the bond must be given to the person infeft in the land disponed in security and appearing on the record as the proprietor; or if the person last infeft in the land or any part thereof be dead, then to the reputed substitute or person entitled to succeed to the same in terms of the last recorded title thereto, notwithstanding any alteration of the succession not appearing on the Register of Sasines. If the last proprietor was an incorporated company which has been removed from the Register of Joint Stock Companies, or a person deceased who has left no heirs or whose heirs are unknown, notice must be given to the Lord Advocate. Where the estates of the debtor have been sequestrated under the Bankruptcy (Scotland) Act, 1913, or any Act thereby repealed, notice must be given to the trustee in the sequestration (unless such trustee has been discharged) as well as to the bankrupt. If the proprietor be a body of trustees, it is sufficient if the notice is given to a majority of the trustees infeft in the land. After the expiry of three months from the date of giving such notice or the expiry of such shorter period as may have been agreed to, the creditor, failing payment of the whole sums to which he is entitled, may advertise the land or any part thereof for sale by public roup. The advertisement shall specify the property: day, hour, and place of sale; and upset price or prices, but it is unnecessary to state that the sale is proceeding under the powers contained in a bond and disposition in security. For the first exposure, the period of advertisement is not less than four consecutive weeks, when the upset price or the cumulo upset prices of the land do not exceed £1,000 and when such price or cumulo prices exceed that amount the period shall be not less than six weeks, in each case prior to the date of exposure to sale. For re-exposure, the period of advertisement is not less than three consecutive weeks. The advertisement must be inserted at least once a week in a daily newspaper published in Edinburgh or Glasgow, and in every case in a newspaper circulating in the district in which the property or the chief part thereof is situated, and published either in the county or in the next neighbouring

county of Scotland. In the case of property situated in Midlothian, it is sufficient to advertise in only one daily newspaper published in Edinburgh, and in the case of property situated in Lanarkshire the advertisement need be in only one daily newspaper published in Glasgow. When the upset or cumulo upsets do not exceed £1,000, it is sufficient to advertise—

(*a*) Twice a week in a newspaper circulating in the district where the property or the chief part is situated and published in that county, or in the next or a neighbouring county of Scotland; or

(*b*) once a week in each of two such newspapers; or

(*c*) once a week in one such newspaper and once a week in a Scottish daily newspaper circulating in the district, irrespective of the place of publication.

The date of the exposure shall be not less than forty-two days from the first advertisement if the upset price or the cumulo upset prices exceed £1,000; if not, not less than twenty-eight days, and for re-exposure not less than twenty-one days.

The exposure to sale may be in Edinburgh or Glasgow, or in any burgh within the meaning of the Local Government (Scotland) Act, 1947, within the county in which the property or the chief part thereof lies, or which is nearest to the property or the chief part, whether or not in the same county.

The sale may be in whole or in lots, at such upset price or prices as the creditor thinks proper. There may be conditions as to apportioning feu-duty, ground-annual, stipend, valued rent, and land tax; also providing that the proprietor of any lot shall relieve the proprietors of the other lots of the whole or part of feu-duty, ground-annual, stipend, and land tax, and a real burden may be created for that purpose. Further, even apart from an actual sale, the creditor, after failure to comply with a demand for payment, is entitled to obtain an allocation of feu-duty or ground-annual with or without augmentation.

The sale proceedings are valid, notwithstanding that the person to whom notice is given is a pupil or minor, or legally incapable; and the sale and disposition are as valid to the purchaser as if made by the proprietor not under disability; and any such disposition imports an assignation to the purchaser of the warrandice contained or implied in the bond and disposition in security under which the land is sold, and also an obligation by the granter of the security to ratify, approve, and confirm the sale and disposition.

The notice ceases to be effective after five years from its date or from the date of the latest exposure.

If there is any surplus, it is consigned in a bank specified in the articles of roup in names of seller and purchaser. Whether there is, or is not, a surplus, a statement of intromissions is prepared and signed by the creditor or his agent. There is then obtained from any solicitor (but not the same solicitor who signs the statement of intromissions), or notary, a certificate that the statement has been submitted to him, and that it shows either no surplus, or a surplus of a stated amount. If there is a surplus, the bank deposit receipt for it is presented, and the certificate certifies to the fact of consignation, specifying the bank and branch, the date of the deposit receipt, the amount of it, and the names on it. The record is cleared by recording (1) the disposition to the purchaser; and (2) a certificate as to surplus, or of no surplus, as the case may be. That joint recording has the effect of completely disencumbering the land sold of all securities and diligences posterior to the security of such creditor, as well as of the security and diligence of such creditor himself, save and except when the security and diligence of such creditor and any prior securities and diligences shall be assigned by way of further or collateral security to the purchaser.

Another remedy available to the creditor is foreclosure as provided by Section 8 of the Heritable Securities Act, 1894. This Section provides that any creditor who has exposed for sale under his bond heritable property held in security, at a price not exceeding the amount due under his security as at the date of exposure, including accrued interest, and under any prior and *pari passu* security, or at any lower price, and has failed to find a purchaser may apply to the sheriff of the county in which the property is situated for decree of foreclosure. The sheriff may, after certain procedure has been carried out, issue the decree, and once this has been recorded the debtor's right of redemption is extinguished and the creditor has the right of the property.

Apart from the involved process necessary to effect a sale of the property, there are two important disadvantages of this method of security—

(*a*) Bonds and dispositions in security are, in terms of an Act of 1696, c. 5, only valid

security in a question with postponed bondholders or a trustee in the debtor's bankruptcy, for sums advanced on or prior to the date of the recording of the security in the Register of Sasines. Hence, any credits to the debtor's account with the bank automatically reduce the amount secured by the total of such payments. This form of heritable security can only be used to cover a dormant account.

(*b*) The amount of the advance is stated in the bond along with the rate of interest, because any document which effects a *security* on land must specify and disclose in the Register of Sasines the limits of the debt secured, i.e. the amount advanced and rate of interest chargeable. Hence the security is limited to a fixed sum, unless a second bond is obtained and recorded.

The bond is stamped at the rate of 5s. per cent on amount of capital advanced. It is registered in the appropriate Register of Sasines, and until registration the creditor has no real right over the land.

(2) **Bond of Cash Credit and Disposition in Security.** To overcome the disadvantage of the operation of the Act of 1696 (see (*a*) above), the bond of cash credit and disposition in security was evolved under an Act of 1856. This is a form of security introduced by statute to meet the case of a bank current account. The deed is in the form of a cash credit bond, with the addition of a disposition of specified heritable subjects in security. The creditor's right to the property is completed by recording the deed (stamped as in (1) at the rate of 5s. per cent) in the Register of Sasines.

The Act of 1856 provides that the principal and interest which may be due upon such cash credit "shall be limited to a certain definite sum, such definite sum not exceeding the amount of the principal sum and three years' interest thereon at 5 per cent." The personal obligation in the bond can be enforced for the repayment of whatever sum is due.

It is still necessary to state in the bond the maximum principal sum to be covered and the rate of interest to be charged. If these are to be exceeded, a new or supplementary cash credit bond must be obtained and registered.

The security subjects can be realised in the same manner as those explained for the ordinary form of bond and disposition in security.

(3) **Disposition "ex facie" Absolute.** To overcome the restrictions of the other two methods and especially as a security for an advance on a current account, banks generally insist on taking an *ex facie absolute disposition,* which conveys the property absolutely to the disponee, and the Register of Sasines (where it must be recorded) will not disclose that it is merely a security. Except for the fact that it bears a fixed stamp duty of 10s. and has the words "for certain good causes and considerations" instead of a price, the document is in exactly the same terms as an ordinary disposition to a purchaser, bearing to be irredeemable.

The bank have all the powers of a true proprietor in a question with third parties, e.g. they can deal freely with tenants and even remove the debtor himself from possession. Sales may be made privately without going through the involved processes required under a bond.

The bank's arrangement with the borrower is set out in a Back Letter (stamped at the rate of 5s. per cent on amount to be secured), which must not be recorded in the Register of Sasines. The Back Letter provides that the security is to cover all sums due or to become due by the debtor, or for which he is responsible to the bank in any way, and confirms that the bank may sell the property either publicly or privately at any time with or without notice, the only restriction being a duty to account for the proceeds and to reconvey the property if the advances are repaid prior to property being sold.

While this is the best form of heritable security for fluctuating advances on current account, there are certain disadvantages—

(*a*) Poinding of the ground is not available, as the bank is in position of feudal proprietor.

(*b*) The creditor assumes (on registration) all the obligations of a proprietor, e.g. liabilities to superior for feu duty and neighbouring proprietors.

(*c*) The difficulty of getting rid of onerous title obligations. In theory, the borrower is under an implied obligation to take a reconveyance of the subjects (see *Clydesdale Bank* v. *McIntyre,* [1909] S.C. 1405). In this case the customer was willing to record a reconveyance, but this would not always apply, e.g. in the case of a limited company going into liquidation, such a reconveyance is not likely to be acceptable to a liquidator when the subjects are valueless.

(*d*) The effects of *National Bank* v. *Union Bank of Scotland,* 1886, 14 R. (H.L.), must not be ignored. In that case the National

Bank had taken a security by way of an *ex facie* absolute disposition from a Mrs. McArthur of a property in Greenock. Later, the Union Bank acquired a reversion of the security subjects and notified the National Bank of their interest. Thereafter, advances were made to Mrs. McArthur by both banks. In a question between the two banks, the House of Lords held that the National Bank's security was limited to advances made prior to the date that the assignation was intimated. Any credits subsequent to that date, in accordance with the rule in *Clayton's* case, are applied to the earliest items on the debit side of the account and continue so to be credited until the balance secured under the first disposition is extinguished.

(*e*) In a disposition expressly in security, the creditor never becomes, by prescription or otherwise, the absolute proprietor of the subjects. For instance, in the event of the sequestration of the debtor, the creditor deducts from his claim the value of the subjects disponed in security, and ranks for the balance (if any), and if the trustee does not take over the property, the creditor does not thereby obtain an absolute right to the property.

Advances may be made in Scotland against the deposit of title deeds of heritable property situated in England, and reference should be made to the Dictionary under LAND CHARGES and LAND REGISTRATION.

INHIBITION. Inhibition is a judicial process or diligence by which a debtor is prohibited from disposing of or charging his land or other heritable property to the prejudice of the inhibitor. It may be used after a decree has been obtained in Court against the debtor. It may also be used where a decree has not yet been obtained. As soon as a summons is taken out, the creditor may procure and serve upon the debtor an inhibition, the effect of this, when duly registered at the Register House in Edinburgh, will prohibit the debtor from contracting any debt or granting any deed by which his house or heritable property may be given away or sold or bonded. Inhibition can be used whenever the creditor holds a proper document of debt, such as a decree of the court, a bond bearing a registration clause or a notarial protest of a bill of exchange. It cannot be made use of on a small debt decree. After authority has been obtained to serve the inhibition it is made effectual by being intimated to the debtor and also recorded in the General Register of Inhibitions and Adjudications or as more commonly known the Personal Register. The authority may be either (1) by letters of inhibition or (2) by inserting a warrant of inhibition in a signeted summons, and therefore can only be obtained in the Court of Session. The effect of recording the Abbreviate of Inhibitions is to render the land litigious. Any person purchasing the debtor's property, or who has been requested to lend money over it, would by making a search at the Register House be cognisant that the lands were burdened by inhibition. All inhibitions followed by adjudication within a year and a day of the first adjudication rank *pari passu* with the first, and hence other creditors adjudicating within that period share in the heritage with the first adjudicator. Thus, A owes money to both B and C. B uses inhibition but does nothing more. C uses no inhibition but adjudges property belonging to A. Now unless B also adjudges within a year and a day of C's adjudication, the latter will be preferred to B, although his inhibition was made prior to C's adjudication.

On the debt being paid, the creditor is bound to cancel the inhibition and this cancellation is also recorded at the Register House, and this clears the debtor's title and leaves him free to deal with his property as he wishes. Inhibitions lapse in five years, and if the creditor has done nothing to follow up the inhibition the debtor can ignore it after five years from its date.

JUDICIAL FACTORS. These are appointed by the Court and are subject to the provisions of the Judicial Factors Acts, 1849, 1880 and 1889, and to the supervision of the Accountant of Court. They are of various kinds—

1. Judicial Factor on a trust estate, e.g. where all trustees have died or where there is a deadlock between trustees.

2. *Factor loco tutoris.* Appointed where a father and mother of a pupil are dead and no relation comes forward to claim the office of tutor.

3. *Curator bonis* to a minor. A minor has power to choose his own curators, but in a case of necessity the Court will appoint a *curator bonis* to look after his estate.

4. *Curator bonis* to an incapax. Appointed where a person owing to physical infirmity or mental weakness is incapable of managing his own affairs.

5. *Factor loco absentis.* Appointed where a person has gone abroad without having

made provision for the management of his affairs during his absence.

6. Judicial Factor under the Bankruptcy Act.

All these appointments are made by the Court of Session, but in the case of estates of which the yearly value does not exceed £100, the Sheriff of the County in which the ward resides may appoint factors *loco tutoris* and *curators bonis*.

A Judicial Factor has to find caution on his appointment. He makes up an inventory and valuation of his ward's estate and lodges this with the Accountant of Court to whom he submits his accounts annually. The Accountant of Court fixes the commission payable to the factor. In administration, a factor's powers are similar to those of a trustee, but he has in addition to consult the Accountant of Court regarding important matters, e.g. before entering upon litigation. The Accountant of Court, however, takes no responsibility as to advising with regard to investments, and the responsibility for this rests entirely upon the factor. If the factor desires special powers, it is necessary for him to report to the Accountant, obtain the Accountant's opinion, and thereafter submit the matter on petition to the Court and get their authority.

The factor cannot resign without leave of the Court, and he may be removed for misconduct or failure to discharge his duties.

On the conclusion of his factory he obtains his discharge by petition to the Court, following upon a report by the Accountant of Court.

JUS RELICTI AND JUS RELICTAE. (See WILLS AND SUCCESSION in this Appendix.)

LEGAL RIGHTS. (See WILLS AND SUCCESSION in this Appendix.)

LEGAL TENDER. Bank of England notes, except for one pound and ten shillings, are not legal tender in Scotland. Bronze coins are legal tender to extent of one shilling, and silver coins to extent of forty shillings. Scottish Bank notes are not legal tender in Scotland.

LEGITIM. (See WILLS AND SUCCESSION in this Appendix.)

LIFE POLICIES AS SECURITY. There are two methods of taking a security over a life policy—

1. An absolute assignation for "certain good causes and considerations" is taken from the assured and a Back Letter or certificate by the bank is stamped to cover the amount to be advanced or more often the ultimate yield of the policy. The assignation is stamped 10s. and the Back Letter 5s. per cent on the amount to be covered.

2. An assignation in security is taken from the assured, and this is stamped at the rate of 5s. per cent on the amount of the advance or on the estimated ultimate yield of the policy.

Written notice of the assignation must be given to the assurance company at their principal place of business. In practice, two notices are sent to the assurance company along with the assignation and the statutory fee of 5s. (a few companies dispense with this fee). One of the notices of intimation is retained by the company, and the assignation and the duplicate is returned, with a note of acknowledgment of the assignation. It will be necessary to ascertain whether the company has any prior notices and, if so, the writs relating to these prior dealings should be obtained by the bank and examined as to the validity of the assignor's title. If age has not been admitted on the policy, this matter should be taken up at the time of the assignation. When policies belonging to third parties are assigned, an explanatory letter is taken and this is stamped at the rate of 5s. per cent on the amount required. A policy taken out by a husband expressed to be for the benefit for his wife or his children, or of his wife and children, cannot be assigned by the husband in security.

The requisites of a valid assignment are—

1. It must be in writing either indorsed on the policy or, as is more usual, by a separate deed.

2. There must be express power to sell or surrender the policy.

3. In the case of an assignation in security, provision should be made for power to discharge the company on payment of the amount due in the policy.

The mere possession of a policy without an assignation does not confer on the creditor any claim on the policy although it is otherwise in England. In one case it was decided that if the contract is entered into in England with a domiciled Englishman for a loan against the policy, although both the borrower and the insurance company are domiciled in Scotland, an effectual preference was obtained by the lender by a mere possession of the policy and the usual intimation to the insurance company. (See also title on LIFE POLICY in the Dictionary.)

LOCAL GOVERNMENT (SCOTLAND) ACT, 1947. (1) The financial year of every

local authority in Scotland runs from 16th May to 15th May in the following year.

(2) In regard to *County Council Bank Accounts*, there is no statutory limit to the number of accounts which may be opened. Specific instructions regarding operations on the accounts should be obtained in a certified excerpt of the Minute of the Meeting of the Council. It is sufficient if the excerpt is certified by the County Clerk.

All cheques drawn on the County Fund are made by an Order of the Finance Committee, which is signed by two members of that Committee and countersigned by the County Clerk. The cheques issued in pursuance of this Order must be signed by the County Treasurer or by such other officer of the County Council as the Council or its Finance Committee may appoint for this purpose.

(3) In the case of *Town Council Bank Accounts*, there can be two accounts only, unless the Secretary of State authorises the keeping of additional accounts if these are considered necessary. The provisions regarding the operations on the account are similar to those for County Councils and, accordingly, a Certified Excerpt Minute of the Town Council Meeting making these directions should be obtained, the excerpt being signed by the Town Clerk. The cheques will be signed by the Town Chamberlain.

(4) In regard to *District Council Bank Accounts*, one bank account only is allowed under the Act. All cheques drawn on the account must be signed by two members of the Council and by the Clerk or Treasurer of the Council. In this case the Excerpt Minute of the Council governing operations on the account will be certified by the Clerk to the District Council.

(5) The 1947 Act does not supersede the *borrowing powers* which local authorities have under other statutes or statutory orders. The Act provides that where any other enactment or other statutory order requires the consent of a Minister for the exercise of borrowing powers, the authority cannot borrow money to meet capital expenditure, except with such consent. In addition, County or Town Councils may not, without the consent of the Minister concerned, borrow money to meet capital expenditure, unless the resolution to borrow has been agreed to by two-thirds of the members of the Council present and voting at the meeting at which the resolution is passed. A District Council may not borrow to meet any expenditure of a capital nature without the consent of the Secretary of State for Scotland.

The total amount which may be borrowed (*a*) on overdraft from a bank, (*b*) on cash credit account with a bank, and (*c*) by temporary loan or deposit receipt, to meet expenditure of a capital nature and for the time being outstanding, must not exceed 15 per cent of the total amount borrowed to meet capital expenditure and for the time being outstanding.

Temporary overdrafts for current expenditure of an annual nature in connection with any of the functions of the authority are permitted, provided that all sums so borrowed are repaid before the expiration of the financial year in which they are borrowed.

Section 278 of the Act provides that "a person lending money to a local authority on any form of security or taking or holding any such security shall not be bound to inquire whether the borrowing of the money is or was legal or regular, or whether the money raised was properly applied, and shall not be prejudiced by any illegality or irregularity in these matters, or by the misapplication or non-application of any such money." It is suggested that this provision is wide enough to cover all borrowings from a bank.

LUNATICS. Where a person has been legally certified insane he is incapable of contracting, and his contracts are made on his behalf by his guardian, known as a *curator bonis*. Until a person is proved insane, he is presumed to be sane and his contracts are voidable according to circumstances. His estate is always liable for the price of necessaries.

MAILLS AND DUTIES. An action of maills and duties is the diligence by which a creditor in a heritable security may attach rents due by the tenants of the heritable subjects constituting the security. The action is directed against the proprietor and a notice in statutory form (as set out in the Heritable Securities Act, 1894) is served on the tenants. This diligence is not available to a Superior for his Feu-duty, nor, it is thought, competent to a creditor holding a disposition *ex facie* absolute qualified by a back letter as he has a right to exact the rents under his title.

The effect of the decree is that the tenants must pay the rents to the creditor. The creditor has all the rights that the proprietor possessed, including power to sequestrate for rent, grant leases, and remove tenants.

MARRIED WOMEN. By the Married Women's Property (Scotland) Act, 1920, a married woman has the same power of disposal of her real and personal estate as if she were unmarried. She can enter into contracts and incur obligations and is capable of suing and being sued as if she were not married, and her husband is not liable in respect of any of her contracts or obligations made on her own behalf. Where a wife is in minority, the husband, if of full age, is her curator. If the husband is in minority, the wife's father or other curator, if she has any, is entitled to continue to act as such until she attains majority or her husband's curatory commences. In these circumstances the consent of such curators is necessary to the wife's contracts.

While in Scotland the contracting powers of married women are unlimited, it is advisable when taking a guarantee from a married woman or similar obligation to obtain a letter from a solicitor (preferably her own) stating that she fully understands the nature of the transaction entered into.

MINORS AND PUPILS. According to the law of Scotland, infants, i.e. persons under the age of 21, are divided into two classes, pupils and minors. *Pupils* are children till they reach the age of 14 in the case of males, and the age of 12 in the case of females. *Minors* are children above these ages till they attain the age of 21. The guardian of a pupil is known as a tutor, and he has control over both the person and estates of his ward. The natural guardian or tutor is the child's father, and on the father's death, the mother alone or along with tutors appointed by the father. Tutors may also be appointed by the Court. A pupil is absolutely incapable of entering into any contract, and contracts on a pupil's behalf are made by the tutor himself.

The guardian of a minor is known as a curator, and he, unlike a tutor, has control only of the estates of his ward. The natural curator of a minor is his father or his mother, and if these are dead the minor is able to choose curators for himself, if he so wishes, or they may be appointed by the Court. A minor, however, may have no curators. He has capacity to contract subject to the following qualifications: If he has a curator, a minor's contracts require the consent of this curator and are null if made by the minor alone.

Where minors have no curators they may act by themselves, and payments made to them by their debtors will be valid and effectual. Even where they have curators, minors may validly contract without the curator's consent in the following cases—

(1) If a minor carries on a trade or business, contracts made by him in the ordinary course thereof are binding. (2) Where a minor holds himself out to be of full age so as to deceive parties contracting with him, such contracts are binding on him; and (3) where a minor contracts for necessities, he must pay a reasonable price for them.

Contracts made by a tutor on behalf of a pupil, or by a minor with consent of his curator, or, where he has none, of himself alone, may be reduced by the pupil or minor after he attains majority and till the *quadriennium*, i.e. the space of four years after majority, but the pupil or minor must prove to the Court that he suffered considerable loss, and that the contract was not fit and proper when entered into.

Advances should not be granted to pupils or minors.

MOVEABLES. Every object capable of movement or of being moved and not being fixed in the ground, as for example, money, cattle, corn, furniture and commodities, is moveable property and in Scots Law these are classed as corporeal moveables while incorporeal moveables are those rights that must be transferred by means of writing, such as policies of insurance, stocks and shares and debts.

No security can be obtained over corporeal moveables which remain in the hands or control of the borrower and it is necessary for a lender to obtain actual or constructive possession of the moveables. In England, goods may be made a security for a loan by means of a bill of sale which must be registered but there is no analogous form of security in Scotland.

The goods may be delivered to the lender or to a warehousekeeper on his behalf, or the key of the store in which the goods are deposited may be delivered into the custody of the lender. It is more usual to obtain constructive delivery by means of a delivery order duly intimated to the storekeeper, or a warehouse warrant.

Incorporeal moveables include rights and claims for money or goods, debts, policies of assurance, bonds, shares and a beneficiary's interest in a trust estate. In most cases, an assignation is required, and to be valid must be intimated to the debtor in order to divest the former creditor and to interpel the debtor in the obligation assigned from paying to the creditor.

NOTOUR BANKRUPTCY. See (BANKRUPTCY in this Appendix.)

PARTNERSHIP. The law of Partnership is based on common law and the Partnership Act, 1890, and the Limited Partnerships Act, 1907. In general these acts apply to Scotland save that there are certain fundamentals in which the Scots law of partnership differs from English law. (See under PARTNERSHIPS in the Dictionary.)

A partnership, as in England, can sue and be sued in the firm's name. In Scotland the firm's name would be used alone if personal, e.g. John Brown & Company, but if descriptive, the addition of partners would be necessary, e.g. Ironstone Company would require the partners to be joined. In Scotland the firm is a separate *persona*, having a distinct legal existence apart from the partners, and the members of the firm are looked upon as co-obligants, that is guarantors, for the debts of the firm. The firm may be made bankrupt and so may all or any of the partners, and where two firms exist carrying on two distinct businesses but consisting of the same partners, such firms on bankruptcy would be separately sequestrated.

POINDING. Poinding is a diligence to attach the corporeal moveables of a debtor, with certain exceptions, which are in his own possession or in the possession of a third party. Unlike arrestment, poinding can only take place in execution. Generally, it can only be used where there has been a formal requisition on the debtor to pay, called a "charge." The mode of execution of this charge has to be either personally at the dwelling place of the debtor or edictally, i.e. where the debtor cannot be found personally or has no dwelling place within the country. The notice is given by a Sheriff Officer who serves a Schedule of Charge and on the expiry of the days of charge without payment, the creditor can then proceed to poind. As a general rule, all corporeal moveables belonging to the debtor in his possession, or in the hands of the poinder, or a third party, may be poinded. Debts or claims for the payment of money cannot be poinded, nor can business books, bonds, bills, plans and documents of a similar character. Again, ships and boats cannot be poinded as arrestment is the proper diligence to attach these. The general rule is that only things corporeally valuable and capable of being sold by the Sheriff's Warrant are poindable.

Upon the expiry of the period allowed by the charge, the Sheriff Officer has the goods poinded and valued by two sworn valuators, and entered in a detailed schedule showing their appraised value. The goods are offered to the debtor or any person who appears for him, and on his refusal to take them, the officer adjudges and declares the poinding complete and the goods to belong to the creditor and ordains them to remain until a warrant to sell is obtained. Within eight days after the day on which the poinding was executed, the Officer must report the execution thereof to the Sheriff, giving full details of the transaction. In the sale of the poinded goods they must be offered at not less than the appraised value, and if no sale is effected, the poinder or any other creditor may purchase them. If no offerer appears, the effects are handed to the creditor at the appraised value to the extent of his debt and interest. The Sheriff Clerk keeps a register of all poindings. The explanation already given relates to what is known as personal poinding but there is also real poinding or as it is more commonly known, *poinding of the ground.* This is a diligence available to the superior for his feu-duty or to a heritable creditor. The effect is that where the interest on the debt or the debt itself is in arrears, the party in right of it can poind the moveables on the ground, and those of tenants only to the amount of their rent due and unpaid. It is preferable to a personal poinding.

PRESCRIPTION. The Statutes of Limitation do not apply to Scotland, and prescription differs greatly from English Law on this subject. The law of prescription has, of course, the same meaning, namely, that part of the law under which rights may be acquired or lost. The acquirement of rights is by positive prescription, whilst the loss of rights is known as negative. Negative prescription is the most important branch. It is based on a statute of 1469, and limits all rights to forty years, except in case of obligations relating to heritage where the period is twenty years, and, as in English law, periods of minority and disability are excluded. As commercial activities increased, periods of prescription of shorter duration known as "lesser prescriptions" were introduced, primarily to protect parties in case of loss of vouchers, forty years being deemed too long a period for the keeping of such documents. The period of forty years was reduced to twenty years under Section 17 of the Conveyancing (Scotland) Act, 1924.

The chief of the lesser prescriptions are Vicennial, a twenty years' limitation applying to holograph writings where there are no witnesses, e.g. a holograph guarantee. This period was introduced in 1669, and was followed in 1696 by the Decennial Prescription which applied to the inventories and accounts of tutors and curators. Cautionary engagements (see CAUTIONARY OBLIGATIONS in this Appendix) are governed by the Septennial Prescription providing for a period of seven years, whilst bills of exchange and promissory notes are actionable for six years from the last day of grace or where the bill or note is payable on demand, from the date thereof, under the Sexennial Prescription. The Quinquennial Prescription applies to rents on leases, whilst the Triennial, perhaps the most important of the minor prescriptions, introduced in 1579, governs merchants' accounts, servants' wages, house rents, wages of workmen, accounts of writers, agents and surgeons where there has been no written obligation. Where items are due periodically as in rents, wages, etc., each term of three years runs its course from the date of the item, but in other accounts time runs from the date of the last entry. Prescription may be interrupted by civil commotion, the oath of the debtor as to his indebtedness, or by citation in an action. Partial payment, particularly in the case of short prescriptions, will not take the matter out of the prescription.

In *Macdonald* v. *North of Scotland Bank, Ltd.*, [1942] S.C. 369, the Court held that a bank was entitled to plead prescription in respect of a claim for an alleged balance due to a customer. In the *Macdonald* case, the facts were as follows: On 20th November, 1918, there was a sum of £191 18s. at M's credit on current account with the bank. M did not call upon the bank for payment until 1940, when the bank stated that they had no funds in her name, but that, in fact, the balance had been exhausted by cheques signed by her and paid by the bank during 1918 and 1919. M stated that she had never drawn any cheques on her account, her signature on the cheques paid by the bank must have been forged, and that the bank were liable to repay the amount. In these circumstances the bank pleaded the negative prescription and the Court sustained this plea. It was also held that the prescriptive period begins from the day when it first became possible for the customer to take action to enforce her claim and not from the date on which the demand was actually made, thus differing from the position in England as stated in *Joachimson* v. *Swiss Bank Corporation*, [1921] 3 K.B. 110.

PUPILS. (See MINORS AND PUPILS in this Appendix.)

REGISTER OF SASINES. This register is kept in Edinburgh, and there is a separate division of it for each shire or county of Scotland. Sasine is a legal term for "delivery." In Scotland, prior to 1845, when land was conveyed, a symbolical delivery of it took place, the seller actually handing over to the purchaser a handful of the soil to represent the land being purchased. This was done in the presence of a notary and two witnesses. The delivery, or sasine, was recorded in a deed, and the deed was entered on the Register of Sasines. Although this ancient method of land transfer no longer exists, the register is still in use, and a purchaser's title must be completed by the conveyance being recorded in the register.

Mortgages must also be registered. (See BOND AND DISPOSITION IN SECURITY.)

Priority of right is conferred by priority of registration. A purchaser in good faith is entitled to rely upon the register and is protected against any mortgage or conveyance which is not registered.

RETROCESSION. A retrocession is the writ where a debt that has been assigned or transferred is reconveyed to the cedent. The stamp duty is at the rate of 1s. per cent on the amount advanced, and is in some cases indorsed on the assignation. When the assignee of a debt transfers it to another person, the deed is called a translation. Like assignations, retrocessions and translations require to be intimated.

SEQUESTRATION. (See BANKRUPTCY in this Appendix.)

SHIPS. In Scotland the method of taking a mortgage of a ship is similar to English procedure and reference should be made to SHIP in the Dictionary.

SUMMARY DILIGENCE. This is a form of diligence which is peculiar to Scotland, and is competent to holders of bills of exchange, promissory notes, creditors in bonds, and certain other documents, which contain what is known as a consent to registration for preservation and execution. As a rule, before diligence can be done against a debtor an action must be raised in Court and decree obtained, but in these special cases the diligence is said to be summary, because the creditor is in a

position to use any of the appropriate forms of diligence without having to establish his claim by an action in Court.

In the case of a bill of exchange, to obtain the benefit of summary diligence, it is necessary that the bill on being dishonoured by non-acceptance or non-payment should be protested by a Notary Public. The protest must then be registered within six months in the Books of Council and Session or in the Books of the Sheriff Court of the County in which the debtor resides. An extract is then obtained which entitles the creditor, as it is equivalent to a decree of the Court, to arrest or poind his debtor's effects without further delay except where, as in poinding, a "charge" is necessary.

If a bill is accepted payable in England and some of the parties reside in Scotland, summary diligence is competent against these parties where the bill has been protested in England by registering the protest in the Books of Council and Session.

In the case of a bond containing a consent to registration for preservation and execution, a similar procedure is followed, the bond being registered and an extract obtained.

Summary Diligence is not competent on a cheque (*Glickman* v. *Linda*, [1950] S.C. 18).

TERCE. (See WILLS AND SUCCESSION in this Appendix.)

TRUST DEED FOR CREDITORS. (See BANKRUPTCY in this Appendix.)

TRUSTS. The law of Trusts in Scotland is largely determined by the Trusts (Scotland) Act, 1921, which applies practically to all trusts, and also to the offices of tutor, curator, or judicial factor (*q.v.*).

Trustees. A minor, a married woman, a bankrupt, or a corporation, if so authorised by its constitution, may act as a trustee. A lunatic or incapax cannot act.

Trustees have the power to assume new trustees, and this is done by means of a Deed of Assumption which is signed by the existing trustees, and conveys the property to themselves and the new trustee. In the event of all trustees dying, an application must be made to the Court to have new trustees appointed.

Trustees may resign office and this is effected by means of a Minute of Resignation signed by the resigning trustee and intimated to his co-trustees. This deed must be registered in the Books of Council and Session and an extract obtained. A trustee may resign by another method—by a minute engrossed in the trust sederunt book and signed by himself and his co-trustees.

A sole trustee cannot resign until he has assumed new trustees or until the Court has appointed trustees or a judicial factor. A trustee may be removed by the Court where he is insane or incapable of acting through physical and mental disability, or where he is absent from the United Kingdom for six months or over. He may also be removed on grounds of breach of trust.

Powers. Very wide powers are given by the Act, and these are read into trusts where they are not at variance with the purposes expressed in the deed of trust. Even where they are at variance, the Court will on petition grant these powers if they are expedient in the interests of the trust.

As in England, trustees are, unless authorised by the deed of trust, bound to invest in trust securities. A trustee may not invest in bearer securities, or hold these beyond a reasonable time for realisation.

Accounts. The Trusts Act provides that on application to the Court by a trustee or trustees it may order the Accountant of Court to superintend the administration of the trust in relation to the investing and distribution of the trust funds, to audit the accounts, and, if the Accountant thinks fit, he may report to the Court upon any question that may arise in administration, and obtain the directions of the Court. This provision has not been taken advantage of to any great extent. The usual form of trust accounts in Scotland is known as Account of Charge and Discharge. These accounts must be produced for inspection to beneficiaries without charge, but only a residuary legatee can demand a copy at the expense of the estate. Other beneficiaries must pay for copies.

Discharge of Trustee. A trustee on resigning or on the winding up of the trust is entitled to a discharge to be granted by the beneficiaries. If he cannot obtain this from the beneficiaries, he may obtain it from the Court on petition.

WILLS AND SUCCESSION. The term "Will" is not usual in Scots law; testamentary dispositions, however, are possible, one method being less formal than an English will, the other apparently more formal. The former kind known as the "holograph will" includes any writing in the hand of the testator setting out his wishes in relation to his property. A holograph will signed by the testator

and having the essential clauses in the maker's handwriting is good even without witnesses. (See DEEDS, EXECUTION OF, in this Appendix.)

If a will is not holograph, it must be witnessed by two witnesses.

A more elaborate form of settlement is called "Trust Disposition and Settlement," and it is a conveyance generally of the testator's whole estate to trustees to carry out the testator's intentions as expressed in the will.

Who may make a Will? Any person of full age and sound mind may make a will in respect of the whole of his possessions, subject to the legal rights of the spouse and children. Married women of full age have the right to make a testamentary disposition. Pupils under the age of 14 have no testamentary authority, but minors from 14 to 21 may will moveables but not real property. This difficulty can be overcome by sale of their heritable estate in their lifetime and the making of a will in respect of the purchase money.

The Form of the Will. As indicated the will must be holograph or attested as a deed. It is not necessary that it should be expressed in technical language so long as the testator's intention is indicated clearly. Difficulties sometimes arise from the terms of holograph wills. A draft in the handwriting of the testator may be considered a real will or not according to circumstances. That the will is in the form of notes is not necessarily fatal, and a carefully preserved memorandum may be admitted as a will if it can be shown that it was intended to be final and not merely deliberative. A will written in pencil will be good, but pencil alterations to a will in ink will not be admitted unless proved to be final in intent. A will required to be signed cannot have substituted therefor, a stamp or seal, but initials will be sufficient on proof that it was the testator's general practice to initial instead of sign such documents.

The will should be signed at the end and on each page. Where witnesses are required they should be persons having no interest under the will, and they should be over 14 years of age. (See DEEDS, EXECUTION OF, in this Appendix.)

It should be remembered that the Wills Act, 1861, applies to Scotland.

There are other methods of making testamentary dispositions including verbal legacies not exceeding one hundred pounds Scots. If more than one hundred pounds is left as a nuncupative legacy, it is bad only in respect of the excess. Verbal direction to the executor with regard to larger gifts made in writing can be proved on oath.

Revocation. A person can revoke his testamentary deed at his pleasure. As in English law the will speaks from death, but if a contract is made carrying a promise to make a testamentary disposition in favour of a given party the revocation of a will made in carrying out this obligation will be barred, and an action could be brought if the gift as undertaken was not provided for. A will may be revoked by destroying it, obliterating or cancelling the writing with intention to revoke. The act need not necessarily be carried out personally by the testator. Alterations and deletions should be authenticated, but such alterations in pencil will not be given effect to unless something stronger can be shown. A subsequent will, inconsistent with an earlier one, revokes the earlier one, but where each testamentary writing is consistent with the other, all will stand, and where a will is expressly revoked by a later writing any former one will be revived unless the contrary is indicated in the writing. Birth of a child to the testator will have the effect of revoking the will even though the child be born after the testator's death unless it can be shown that the testator intended his will to stand.

There are considerable differences in the laws of succession of England and Scotland.

Legal Rights. Where a man dies testate or intestate there are rights called legal rights which the surviving widow and children have and which cannot be defeated. The widow's rights are known as *terce* and *jus relictae*, and the surviving children's right as *legitim*. A surviving husband has corresponding rights in his deceased wife's estate, and these are known as *courtesy* and *jus relici*. *Terce* and *courtesy* are liferent rights affecting heritage only, while *jus relicti*, *jus relictae*, and *legitim* affect moveable estate only and are rights to a share of capital.

Terce is a legal liferent, and by it a widow is entitled during her lifetime to the free revenue from one-third of the real estate belonging to her husband.

Courtesy is the corresponding right of a widower in his wife's real estate and extends to the whole revenue from the heritable estate belonging to his wife at her death, provided he was the father of his wife's heir.

By the rights of *jus relictae* and *jus relicti*

a widow or a widower respectively is entitled to a one-third share of the moveable estate left by the deceased spouse where there are children. Where there are no children the right is increased to a half share.

Legitim is the right of children to a one-third share of their deceased parent's estate where there is a mother or father alive, and to a half share where the deceased left no spouse. It should be noted that only surviving children share in the legitim fund. If a child dies leaving children, i.e. grand-children of the deceased, these do not share in the legitim fund, and the share which their parent would have taken, if alive, increases the share of the surviving children.

No matter how the deceased intends to dispose of his estate by will, the surviving spouse and children cannot be defeated of their rights. These rights can only be excluded if the spouse or children accept some testamentary provision in lieu or if sufficient provision has been made in a Marriage Contract.

The remaining part of the moveable estate, one-third or one-half, as the case may be, after widow's and children's rights have been satisfied, is termed the "dead's part," and the deceased is entitled to dispose of this as he wishes. Should he have made no will this part goes to his heirs in moveables.

Intestate Moveable Succession. The main statutes which relate to Intestate Moveable Succession are the Intestate Moveables Succession Acts, 1855 and 1919, and the Intestate Husbands Estate (Scotland) Act, 1911. The first Act is important in detailing the order of succession to moveable estate. By the Intestate Husbands Estate (Scotland) Act, 1911, which applies only in the case of a husband dying intestate and survived by no descendants, the widow is entitled to £500 payable rateably out of the net heritable and moveable estate. This provision is in addition and without prejudice to her rights of *terce* and *jus relictae*. Under the Law Reform (Miscellaneous Provisions) (Scotland) Act, 1940, the surviving husband is given the same rights as a widow under the 1911 Act.

Heritable Succession. The main rules of Heritable Succession which are common law rules, are: (1) A male of the same degree excludes a female, e.g. if a man leaves a son and a daughter, the son is the heir in heritage, but if he leave a brother and a daughter, the daughter is the heir. (2) The elder of the same degree excludes the younger, except in the case of females in which case they all take equal shares as heirs portioners (coparceners). In the case of collaterals the next younger brother to the deceased is the heir, but if there are no younger brothers the next older brother succeeds, and so on. If there are no descendants or collaterals the father and his brothers and sisters succeed in the same order as for collaterals. (3) The descendants of a predeceasing heir take the succession to the exclusion of others in the same degree, e.g. if a man die leaving two sons and a child of a predeceasing eldest son, the grandchild is heir.

It should be noted that a mother or her relatives never take the succession, so that if there is no heir on the father's side, the heritable property goes to the Crown as ultimate heir (*bona vacantia*).

The foregoing rules apply only to intestate heritable succession. A person can leave his or her heritage as he or she wishes, subject always to the rights of terce or courtesy of the surviving spouse.

Collation. In intestacy the heir who succeeds to the heritage is barred from claiming a share of moveables if there are others in the same degree of relationship to the deceased as himself, unless he throw into the common pool his heritage and claim a share of the combined heritable and moveable estate. This is known as collation. The heir is not bound to collate and will naturally only do so when it is to his advantage.

APPENDIX II

IRISH LAND LAWS IN THEIR RELATION TO BANKING

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IRISH LAND LAWS IN THEIR RELATION TO BANKING

THE law relating to landed property in Ireland is complicated and technical. To add to the difficulties, the law in the Republic of Ireland and Northern Ireland is diverging more widely each year as a result of legislation passed by the Parliaments of the two self-governing units since their separation.

In an article of this kind, written primarily for bankers, the main consideration must be the position of the banker as a lender. When landed property is offered to a banker as security for a loan, he requires to know only sufficient of the law regarding title to make him aware of the more obvious pitfalls. He would be unwise to attempt to be his own lawyer. The technicalities and the finer points of the law are best left to the Bank's solicitor.

The Landlord and Tenant Act, 1860, commonly called Deasy's Act, placed the relation of landlord and tenant in Ireland on a basis of contract instead of feudal tenure as in England. As a result of that Act it became possible to establish the landlord-tenant relationship by lease or sub-lease for any estate from a fee farm grant downwards to a yearly tenancy which could be created by word of mouth. Very many of the Irish tenants were yearly tenants who held their lands from their landlords at rack rents without any fixity of tenure; frequently the landlords were absentees, who threw on the tenants the burden of maintanance and improvement of the lands; they had power to raise the rents or to evict the tenants on six months' notice without compensation for the tenant's improvements. To remedy these injustices, the tenants demanded what is known as the "Three F's": *Free Sale* of their interests in their holdings, *Fixity of Tenure* so long as they paid their rents, and *Fair Rents* fixed by an independent tribunal.

The Land Act of 1870 met their demands up to a point and ameliorated their condition in four ways.

(1) It made provision for State-assisted purchase of their holdings.

(2) It gave compensation for disturbance.

(3) It allowed compensation for improvements.

(4) It gave the force of law to the Ulster Tenant Right Custom and extended it to the whole of the country.

The Ulster Tenant Right Custom had two characteristics. It secured the tenant in possession so long as he paid his rent and observed his covenants, and it gave him the right to sell his interest in his holding. The Act of 1870 had, however, two principal defects which rendered it unsatisfactory. It did not provide for the fixing of fair rents; the landlord could still go on raising his rents; and the compensation provisions it contained were inadequate. Consequently the agitation went on.

The Land Act of 1881 at last conceded the "*Three F's.*" It established the Irish Land Commission to continue land purchase and to decide applications from tenants for the fixing of fair rents. At that time land purchase took a secondary place to the fixing of fair rents, which was then the most important work of the Commission. The fair rents fixed under this Act were subject to revision every fifteen years. The security conferred by the Act increased the value of agricultural holdings and, in consequence, banks were more willing to make advances on them. There is now no legal limit to the amount which the proprietor of a holding may borrow on his land in any part of Ireland.

Even the Land Act of 1881 did not, however, settle the land question in Ireland. Landlordism had failed so signally and had attracted to itself so much odium that even Conservative opinion in the House of Commons was veering towards the belief that the "dual ownership" compromise represented by the Land Acts of 1870 and 1881 was not sufficient, and that the only satisfactory solution would be a peasant-proprietorship scheme, whereby, with State assistance, the tenant would be enabled to purchase his holding and to become the absolute owner in fee simple of his own estate.

The principle of State-aided Land Purchase had already been embodied in a minor degree in the Church Disestablishment Act of 1869 and in the Land Acts of 1870 and 1881. The three Ashbourne Acts—the Land Acts of 1885, 1888, and 1889—faced the

trusts and charges (if any) which affected his tenancy prior to purchase. In most cases the Registrar does not investigate those incumbrances before registration and, where not investigated, he notes that the lands are registered "subject to equities." It is, therefore, necessary for anyone dealing with land, in regard to which such a note appears on the register or Land Certificate, to investigate what burdens affected the owner's interest prior to vesting. The note "subject to equities" puts him on notice with regard to such burdens. There are other classes of burdens specified in Section 47 of the Registration of Title Act, 1891, and Section 16 of the Registration of Title Act, 1942, which may affect the land without registration. The existence of such burdens should also be inquired into. Any other equitable interests which affect a transferor and which are not registered may be disregarded if no caution or inhibition appears on the Register, as, whether the transferee for value has notice of them or not, they will not affect his title if he gets his transfer registered.

The Land Certificate issued to the registered owner of land, or the Certificate of Charge issued to the registered owner of a charge, is a certified copy of the relevant entries in the Register, and is *prima facie* evidence of the several matters therein contained. For some years the Land Commission was in the habit of retaining the Land Certificate on registration of the land instead of issuing it to the owner, but that practice has now been abandoned. The Land Certificate or the Certificate of Charge issued from the Registry is a certificate of title to the land or charge, and must be produced on any subsequent transaction by the owner relating to the land or charge which requires registration. This ensures that the Land Certificate or the Certificate of Charge shall be kept up to date so far as dealings by the owner with the land or charge are concerned. This distinguishes these documents from a sealed copy of the Register, which need not be produced for subsequent transactions and which is, therefore, evidence of the contents of the Register at the time of issue only.

A great advantage of the Registration of Title system is the ease with which registered land can be transferred. The transfer can literally be accomplished by filling up a form. The investigation of title of registered land is ordinarily a simple matter and the bill of costs is proportionately lower.

There are severe restrictions on the subdivision of holdings purchased under the Land Purchase Acts. No such holding may be subdivided so long as the advance is unpaid. There is the further restriction in the Republic of Ireland that no holding purchased by means of an advance from the Land Commission after 9th August, 1923, may be subdivided *at any time* without the consent of the Land Commission (Land Act, 1923, Section 65 (1)), whether the advance has been repaid or not.

Registered freehold land sold under the Land Purchase Acts can be devised by will; but, under the provisions of Part IV of the Registration of Title Act, 1891, if the full owner dies intestate, the land devolves on the same persons as if it were personal estate; the heir-at-law is cut out and tenancy by curtesy and dower are abolished. This rule, however, applies, in the Republic of Ireland, only to (*a*) registered land, (*b*) which is freehold, and (*c*) which has been sold under the Land Purchase Acts. In the case of unregistered freehold land or freehold land not sold under the Land Purchase Acts, the land descends to the heir-at-law (*Creed* v. *Kearney*, [1943] I.R. 534. In Northern Ireland, since the Law Reform (Miscellaneous Provisions) Act, 1937, all land, whether registered or not, now devolves as if it were personal property. The same Act made important changes in the law relating to the property rights and liabilities of married women, which are not yet applicable to the Republic of Ireland. On the other hand, the Registration of Title Act, 1942, has made some important alterations in the Land Law of the Republic, which have not yet been followed in the North. Section 13 enables the registered owner of a charge to be put in possession of the land summarily on an application to the Court, as a mortgagee in possession, when the principal secured by the charge falls due. Section 20 enables the proving executor of an estate to sell or transfer registered land without the authority of the Court, even if all the executors have not been granted probate.

When money is advanced on the security of land, the loan is ordinarily secured in one of three ways: (1) by a formal mortgage whereby the ownership of the property is transferred or demised to the creditor to secure the payment of the debt; or (2) by a deed of charge whereby the borrower charges the lands with the repayment of the loan without transferring the ownership; or (3) by an equitable mortgage created by the deposit of the title deeds or the Land

Certificate, whereby the borrower undertakes to hold his land in trust to vest in the depositee as security for the loan. If the land is *unregistered* land, the mortgage deed or the deed of charge must be registered in the Registry of Deeds to preserve its priority. If the land is *registered* land, the charge must be registered in the Land Registry. It is the registration and not the deed which creates the charge in registered land. It is needless to point out that there should be no delay in registering a charge. A conveyance of the fee simple in registered land by way of mortgage will not, on registration of the amount secured by it as a charge on the land, vest the fee simple in the mortgagee. That can only be done by registering him as owner of the land.

In the case of an equitable mortgage created by the mere deposit of the title deeds (or the Land Certificate, in the case of registered lands) without any accompanying memorandum, there is no deed which could be registered, but the possession of the title deeds makes it unlikely, though not certain, that there will be any subsequent dealings for value with the land without the knowledge of the depositee, and the security he holds is therefore likely to remain unaffected. If, however, the deposit of title deeds of *unregistered* land is accompanied by a memorandum signed by the depositor setting forth the terms of the deposit, this memorandum constitutes a deed for the purposes of the Registry of Deeds and, if not registered, would be postponed to a subsequent charge which had been registered. For this reason the memorandum (if any) which accompanies the deposit of the title deed with a bank is not ordinarily signed by the depositor. It is merely read by or to the depositor and then signed by two of the bank's officials as evidence of the verbal contract entered into at the time of the deposit.

It is important to note that a mere letter from the borrower, promising or agreeing to deposit title deeds as security, may, if read in conjunction with correspondence requesting the security, constitute a written agreement which would be registrable under the Registry of Deeds Acts in the case of land which has not been purchased under the Land Purchase Acts. Such written communications should, therefore, be avoided as far as possible. The leading case on this point is *Fullerton and Another* v. *Provincial Bank of Ireland*, [1903] A.C. 309, which reverses the decision of the Irish Court of Appeal in *Re Stevenson's Estate*, [1902] 1 I.R. 23. Incidentally, the owner in this case did succeed, despite the fact that the title deeds were with the bank, in granting a subsequent mortgage, which, having been registered, took priority over the bank's unregistered charge which should have been registered.

As the Registry of Deeds Acts do not apply to *registered* land, there is no reason why a memorandum of the deposit of a Land Certificate to create a lien on the land should not be signed by the depositor. It does not require registration and it is the best evidence of the contract. No rights subsequently created by the depositor for value can be registered without the production of the Land Certificate. Its possession by the depositee enables him, by refusing to produce it, to prevent subsequent rights created by the depositor from being converted, by registration, into legal interests that would have priority to the lien. The law regarding registration of subsequent rights is different in Northern Ireland, as will be seen from the case *Re Robert James Watters*, [1934] N.I. 188, referred to below. It should be remembered, also, that though the deposit of a Land Certificate as security establishes a lien, which is good against all subsequent attempts on the part of the depositor to defeat it, it is only an equitable charge and is subject to any *pre-existing* equities that affected the registered owner at the time he made the deposit. In this connection the case of *Tench* v. *Molyneux and Others* (48 I.L.T.R. 48) may be referred to. John Sandes was the purchaser of a holding under the Land Purchase Acts and had registered his title, but had not yet received his Land Certificate, when on 23rd May, 1910, he sold part of his holding to Molyneux and four others. It was a condition of the sale that, as there was a block in the Land Registry, the purchase money should be paid within fifteen days without waiting for the issue of the Land Certificate. The note as to equities was then discharged and the Land Commission annuity was redeemed, and on 13th June, 1910, Molyneux and the other purchasers were put in possession. Sandes did not receive the Land Certificate till 13th July, 1910, and on that date, ignoring the rights of the persons who had purchased part of his property, he deposited it with Mr. Gerald Tench, a solicitor, as security for a loan of £350. When Tench learned that part of the property had already been sold, he took an

action against Molyneux and the other purchasers, who had not yet registered their title, to have the sum of £350 declared well charged on the property they had bought. The Court of Appeal held that, in the circumstances, there was no negligence on the part of the purchasers in not having registered their titles or lodged cautions; that Sandes had become a trustee for them from the date of their purchase; and that their equity, being prior in point of time to Tench's, should prevail. This case emphasises the need of caution on the part of lenders in accepting a Land Certificate as security from a borrower of bad repute. It should be a routine procedure in all cases of a bank loan on the deposit of a Land Certificate to have the Register inspected to discover whether any burdens, cautions, or inhibitions have been entered in it which would put the bank on notice of existing interests.

I have referred above to the case *Re Watters*, [1934] N.I. 188, as illustrating certain differences between Land Registry practice in Northern Ireland and the Republic of Ireland. In that Northern Ireland case the registered owner had deposited his land certificates with the Hibernian Bank as security for an overdraft. Subsequently he executed a charge in favour of Alexander Ferguson, who applied to the bank to produce the certificates before the Registrar so that he might get his charge registered. The bank refused to do this unless a note was made in the Register evidencing their claim as equitable mortgagees. The Registrar made an order refusing to make such an entry in the Register. Ferguson then applied to the Registrar for an order to the bank to produce the land certificates. The Registrar granted the order, and the bank thereupon appealed against both orders of the Registrar. The appellate Court held (1) that the priority of the bank's charge would remain unimpaired by the lodgment of the Land Certificates in the Registry, and (2) that the Registrar should not have refused to enter a note of the bank's charge in the Register.

The registration of title practice, both in the North and in the South, has changed considerably since the decision in *Re Watters* owing to the adoption of new Land Registration Rules in both parts of the country. The rules in force in the Republic of Ireland are now the Land Registration Rules, 1937, as amended by the Land Registration Rules, 1944 and 1946; while in Northern Ireland the current regulations are the Land Registry of Northern Ireland Orders and Rules, 1936. The Northern Ireland Rules, following the decision in *Re Watters*, provide for the entry of a note of the deposit of a land certificate as security for an advance (Order 8, rule 20). They also give the Registrar wide powers to call for the production of Certificates of Title (Land Certificates or Certificates of Charge). In the Republic of Ireland the new rules enable the Registrar to make certain entries affecting property without the production of the Certificates of Title, e.g. judgment mortgages, burdens against the owner *in invitum*, cautions, inhibitions, and *lis pendens*. There are two sections of the Registration of Title Act, 1891, which should be carefully noted in connection with these rules. Section 45 (2) provides that if the consent of the registered owner *or such other consent as may be prescribed* is not forthcoming, no burden on registered land shall be registered without an order of the Court. Rule 100 of the Land Registration Rules, 1937, prescribes what consent may be substituted for that of the registered owner and in what cases. Section 81 (2) provides that the Registrar's powers to order production of Certificates of Title be *subject to general rules*, and rule 160 prescribes when the Registrar may require production. The *Irish Law Times*, in an article on page 301 of its issue of 6th November, 1937, writes as follows regarding the position under the 1937 rules—

> "In every case in which a dealing can be registered only if the certificate of title is produced, it will be necessary for a solicitor to consider carefully whether he can compel its production for the purpose of its registration. In this connection it is to be remembered that the Registrar has only jurisdiction to make an order for the production of a certificate if registration of the dealing can be made without the consent of its holder (Section 81 (2)). If the transaction is a voluntary one, such as a transmission on death, the registration will not affect the rights of the holder of the certificate. His consent to the production of the certificate is therefore not necessary and an order for its production can be made under the section. But if the dealing is a transaction for value such as a sale or mortgage its registration would defeat or postpone the 'unregistered' right of the holder of the certificate with whom it has been deposited by way of lien (Section 44 (2)); in these cases its registration cannot be made 'without the

consent of' the depositee; and there is no jurisdiction to make an order for the production of the certificate under Section 81 (2). A solicitor for a purchaser or mortgagee must therefore always ascertain whether a certificate of title was issued; and if it was, he should not complete the transaction, pay the purchase money, or advance the loan until the certificate is delivered to him for the purposes of registration or he is satisfied that it has been deposited in the Registry for that purpose (R. 166)."

The mortgagee by deed of unregistered land has several remedies open to him if the mortgagor defaults. He may enter into possession and cut and sell timber when in possession, or he may sell without recourse to the Court, or sell in pursuance of a Court Order, or he may appoint a receiver. He has also power to insure the mortgaged property against fire. The exercise of these powers is regulated by Sections 20–24 of the Conveyancing Act, 1881. He may, of course, as an additional general remedy, sue for the recovery of his charge in an action for debt.

Which of these remedies are applicable and which he should take will depend on the terms of the mortgage deed and the particular circumstances of each case.

The owner of a charge or an equitable mortgage on registered land has not all those remedies. Not having any ownership in the land, he cannot enter into possession, or sell it without recourse to the Court, or bring an action for ejectment of the registered owner (*Northern Banking Co.* v. *Devlin*, [1924] I.R. 90), or cut and sell the timber, but he may insure the mortgaged property and may appoint a receiver. For other remedies, he must apply to the Court. In the Republic of Ireland, however, since the Registration of Title Act, 1942, came into operation, he can be put into possession of the land summarily by the Court with the powers of a mortgagee in possession.

There is one other class of mortgage known as a judgment mortgage, to which reference should be made. It was created by the Judgment Mortgage Act, 1850, and has been extended by the Circuit Court (Registration of Judgments) Act, 1937. A creditor who has obtained judgment in the High Court or the Circuit Court may have the amount decreed charged on the judgment debtor's lands by registering an affidavit giving the prescribed particulars in the Registry of Deeds, in the case of unregistered lands; or, in the case of registered land, in the Land Registry. In this connection the case *Re Strong*, reported in [1940] I.R. 382, is of importance. Mabel Strong had bought registered lands from Tevlin on 14th October, 1939, and had the transfer registered in her name on 18th October, 1939; but a few minutes before the registration a judgment mortgage against Tevlin had been entered in the Register as a burden on the land. It was held by the Supreme Court that Strong was entitled to have the judgment mortgage entry cancelled from the Register, as the vendor had disposed of his beneficial interest in the land at the time the entry was made and was holding the land merely as a trustee for Strong.

To complete this survey of the Irish Land Law, it is necessary to refer to certain charges on land which are given statutory priority. The Land Purchase annuity is one of those charges. If it falls into arrears, the Land Commission may put the holding up for sale, discharged from all claims and incumbrances other than the statutory liabilities of the owner of the holding in respect of the land, public works charges, and the interests of sub-tenants (if any). If the holding is not sold, the Land Commission may be put into possession freed from all charges and incumbrances, except public works charges. To avoid the loss of their security, bankers should therefore insist that, where they have made advances on land subject to annuities payable to the Land Commission, the annuity payments and the receivable order, which must accompany them, should pass through the bank.

Priority is also given to certain Agricultural Credit Corporation claims. The Agricultural Credit Corporation makes advances to registered owners of registered land and to tenant-purchasers of unregistered land vested in the Irish Land Commission, but not yet vested in the tenants as owners. In the case of registered land, priority is given by the Agricultural Credit Act, 1947, to charges not exceeding £400 in favour of the Corporation over all unregistered charges and over all burdens preserved merely by a note as to equities, unless protected by a caution entered in the Land Registry. Priority is also given by the same Act to charges not exceeding £400 in favour of the Corporation on unregistered land vested in the Irish Land Commission, but not yet vested in the tenants as owners, over all prior charges (save State or Land Commission claims), which have not been protected by a caution entered in the Land

Register under Section 61 of the Registration of Title Act, 1891, read with Section 43 of the Agricultural Credit Act, 1947. No banker who has a charge or an equitable lien against such land should fail to have a caution entered.

From the Bank's point of view, a registered charge is always to be preferred to an equitable lien arising from the deposit of title deeds or land certificates, but the desire for secrecy on the part of the borrower in what may be a purely temporary advance often precludes a formal deed of charge and registration.

F. C. KING.