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MEETINGS

M E E T I N G S

THE REGULATION OF
AND PROCEDURE AT MEETINGS OF
COMPANIES AND PUBLIC BODIES
AND AT PUBLIC MEETINGS

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PREFACE

THIS book has been written primarily for company secretaries and students preparing for secretarial and accountancy examinations, for which a knowledge of Procedure at Meetings is required. Accordingly, Part I is concerned with Meetings of Directors and Shareholders of Registered Companies, since the majority of corporations are included in this category. As this subject is dealt with fully, Part I will, it is hoped, also be found of service to chairmen of and shareholders in Limited Companies. The principles of the Common Law relating to meetings are set out in Part II. Part III deals with the Meetings of Public Bodies, since some knowledge of the organization and control of these bodies is also demanded of examination candidates. Part IV sets out the important points in connection with the meetings of Statutory (or Parliamentary) Companies; while, as Part V, have been added a few notes on the important matter of defamatory statements.

This (Fifth) Edition has been brought into line with the Companies Act, 1948.

F. D. H.

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App. Cas.	Appeal Cases (1876-1890).
Atk.	Atkyn's Reports.
Barn. & Cres.	Barnewall & Cresswell's Reports.
Bing.	Bingham's Reports.
C. & P.	Carrington & Payne's Reports.
C.B.	Common Bench Reports.
Ch.	Chancery Appeals (Law Reports).
Ch.D.	Chancery Division (Law Reports) (New Series).
De G. & J.	De Gex & Jones Reports.
E. & B.	Ellis & Blackburn's Reports.
East	East's Reports.
Eq.	Equity (Law Reports).
Ex.	Exchequer Reports.
F. & F.	Foster & Finlason's Reports.
Glen's L.G. Cases	Glen's Local Government Case Law.
H. & N.	Hurlstone & Norman's Reports.
Hare	Hare's Reports.
H.L.C.	House of Lords Cases.
I.R.	Irish Reports.
J.P.	Justice of the Peace
K.B.	King's Bench (Law Reports).
L.J. Ch.	Law Journal, Chancery Reports.
L.J.C.P.	" Common Pleas.
L.J. Ex.	" Exchequer Reports.
L.J.Q.B.	" Queen's Bench.
Loc. Gov. Rept.	Local Government Reports.
L.R. Ex.	Law Reports, Exchequer.
L.R.P.C.	Law Reports, Privy Council.
L.T.	Law Times Reports.
L.T.J.	Law Times Journal.
M. & G.	Manning & Granger's Reports.
Moore P.C.	Moore's Privy Council Reports.
Notes of Cases	Notes of Cases.
Q.B.	Queen's Bench Reports.
Q.B.D.	Queen's Bench Division (Law Reports) (New Series).
Rettie	Rettie.
S.C.	Sessions Cases.
Sc.L.R.	Scottish Law Reporter.
Show.	Shower's Reports.
S.J.	Solicitor's Journal.
Stra.	Strange's Reports.
T.L.R.	Times Law Reports.
W.N.	Weekly Notes.
Wills on Vestries	Wills on Vestries.

PART I

THE MEETINGS OF COMPANIES

CHAPTER I

INTRODUCTORY

THE meetings held in connection with incorporated companies (which expression is used in the following pages as a generic term including (a) Registered Companies which are incorporated under the Companies Act, 1948, or earlier Acts, and (b) Statutory Companies which are incorporated by special Act of Parliament) may be classified under the following headings—

- (1) Meetings of Directors.
- (2) Meetings of Shareholders.
- (3) Meetings of Creditors and Contributories.

The meetings under (1) and (2) are held by the company as a going concern. Meetings under (3) concern the company in liquidation.

Registered Companies

The procedure of this class of companies, as regards meetings, will be found in Articles of Association. Section 8 of the 1948 Act states that "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."

A company limited by shares, for example, usually registers with the Memorandum of Association printed Articles of Association, which set out the regulations

for the management of the company. Such printed regulations are, however, in most cases based on Table A scheduled to the Companies Act, 1948, that Table being a statutory model set of articles drafted by the Legislature for the use of companies. Other companies adopt the provisions of Table A, wholly or partly. Hence, the clauses of the Table set out and explained in the following pages will be found useful and instructive, although they may not in terms apply to a particular company.

Statutory Companies

A statutory company is incorporated by special Act of Parliament. The regulations of this class of company will be found in the Companies Clauses Consolidation Act, 1845, which is equivalent to, and fulfils the functions of, the Articles of Association of a registered company. The arrangement of the subject matter in Part I of this book, dealing exclusively with incorporated companies, is concerned mainly with registered companies, but points of difference in the procedure of statutory companies will be indicated and explained; while further notes on the meetings of such companies will be found in Part IV.

It will be observed from a comparison of clauses 98-106 of Table A, with Sections 92 to 98 of the Companies Clauses Consolidation Act, 1845, which apply to statutory companies, that directors of registered and statutory companies conduct their proceedings on similar lines.

The clauses just mentioned are here set out.

REGISTERED COMPANIES: TABLE A

PROCEEDINGS OF DIRECTORS

98. The directors may meet together for the despatch of business, adjourn, and otherwise regulate their meetings, as

they think fit. Questions arising at any meeting shall be decided by a majority of votes. In case of an equality of votes, the chairman shall have a second or casting vote. A director may, and the secretary on the requisition of a director shall, at any time summon a meeting of the directors. It shall not be necessary to give notice of a meeting of directors to any director for the time being absent from the United Kingdom.

99. The quorum necessary for the transaction of the business of the directors may be fixed by the directors, and unless so fixed shall be two.

100. The continuing directors may act notwithstanding any vacancy in their body, but, if and so long as their number is reduced below the number fixed by or pursuant to the regulations of the company as the necessary quorum of directors, the continuing directors may act for the purpose of increasing the number of directors to that number, or of summoning a general meeting of the company, but for no other purpose.

101. The directors may elect a chairman of their meetings and determine the period for which he is to hold office; but if no such chairman is elected, or if at any meeting the chairman is not present within five minutes after the time appointed for holding the same, the directors present may choose one of their number to be chairman of the meeting.

102. The directors may delegate any of their powers to committees consisting of such member or members of their body as they think fit; any committee so formed shall in the exercise of the powers so delegated conform to any regulations that may be imposed on it by the directors.

103. A committee may elect a chairman of its meetings; if no such chairman is elected, or if at any meeting the chairman is not present within five minutes after the time appointed for holding the same, the members present may choose one of their number to be chairman of the meeting.

104. A committee may meet and adjourn as it thinks proper. Questions arising at any meeting shall be determined by a majority of votes of the members present, and in case of an equality of votes the chairman shall have a second or casting vote.

105. All acts done by any meeting of the directors or of a committee of directors or by any person acting as a director shall, notwithstanding that it be afterwards discovered that there was some defect in the appointment of any such director or person acting as aforesaid, or that they or any of them were disqualified, be as valid as if every such person had been duly appointed and was qualified to be a director.

106. A resolution in writing, signed by all the directors for the time being entitled to receive notice of a meeting of the directors, shall be as valid and effectual as if it had been passed at a meeting of the directors duly convened and held.

**STATUTORY COMPANIES: COMPANIES CLAUSES
ACT, 1845, SECTIONS 92-98****MEETINGS OF DIRECTORS**

92. The directors shall hold meetings at such times as they shall appoint for the purpose, and they may meet and adjourn as they think proper, from time to time, and from place to place, and at any time any two of the directors may require the secretary to call a meeting of the directors, and in order to constitute a meeting of directors there shall be present at the least the prescribed quorum, and when no quorum shall be prescribed there shall be present at least one-third of the directors; and all questions at any such meetings shall be determined by the majority of votes of the directors present, and in case of an equal division of votes, the chairman shall have a casting vote in addition to his vote as one of the directors.

PERMANENT CHAIRMAN OF DIRECTORS

93. At the first meeting of the directors held after the passing of the special Act, and at the first meeting of the directors held after each annual appointment of directors, the directors present at such meeting shall choose one of the directors to act as chairman of the directors for the year following such choice, and shall also, if they think fit, choose another director to act as deputy-chairman for the same period; and if the chairman or deputy-chairman die, or resign, or cease to be a director or otherwise become disqualified to act, the directors present at the meeting next after the occurrence of such vacancy shall choose some other of the directors to fill such vacancy; and every such chairman or deputy-chairman so elected as last aforesaid shall continue in office so long only as the person in whose place he may be so elected would have been entitled to continue if such death, resignation, removal, or disqualification had not happened.

OCCASIONAL CHAIRMAN OF DIRECTORS

94. If at any meeting of the directors neither the chairman nor deputy-chairman be present, the directors present shall choose some one of their number to be chairman of such meeting.

COMMITTEE OF DIRECTORS. POWERS OF COMMITTEE

95. It shall be lawful for the directors to appoint one or more committees, consisting of such number of directors as they think fit, within the prescribed limits, if any, and they may grant to such committees, respectively, power on behalf of the company to do any acts relating to the affairs of the company which the directors could lawfully do, and which they shall from time to time think proper to entrust to them.

96. The said committee may meet from time to time, and may adjourn from place to place, as they think proper, for carrying into effect the purposes of their appointment; and no such committee shall exercise the powers entrusted to them except at a meeting at which there shall be present the prescribed quorum, or, if no quorum be prescribed, then a quorum to be fixed for that purpose by the general body of directors; and at all meetings of the committees one of the members present shall be appointed chairman; and all questions at any meeting of the committee shall be determined by a majority of votes of the members present, and in case of an equal division of votes the chairman shall have a casting vote, in addition to his vote as a member of the committee.

PROCEEDINGS TO BE ENTERED IN A BOOK, AND TO
BE EVIDENCE

98. The directors shall cause notes, minutes, or copies, as the case may require, of all appointments made or contracts entered into by the directors, and of the orders and proceedings of all meetings of the company, and of the directors and committees of directors, to be duly entered in books, to be from time to time provided for the purpose, which shall be kept under the superintendence of the directors; and every such entry shall be signed by the chairman of such meeting; and such entry, so signed, shall be received as evidence in all courts, and before all judges, justices, and others, without proof of such respective meetings having been duly convened or held, or of the persons making or entering such orders or proceedings being shareholders, or directors, or members of committee respectively, or of the signature of the chairman, or of the fact of his having been chairman, all of which last-mentioned matters shall be presumed until the contrary be proved.

CHARTERED COMPANIES

It is not proposed to deal in these pages with companies incorporated by Royal Charter, but the main distinction between chartered companies and registered or statutory companies appears in the following extract from the judgment by Bowen, L.J., in *Baroness Wenlock v. River Dee Company* (1883, 36 Ch.D. p. 685, footnote).

At common law a corporation created by the King's Charter has, *prima facie*, and has been known to have ever since *Sutton's Hospital case* (10 Co. Rep. 30b), the power to do with its property all such acts as an ordinary person can do, and to bind itself to such contracts as an ordinary person

can bind himself to ; and even if by the Charter creating the corporation the King imposes some direction which would have the effect of limiting the natural capacity of the body of which he is speaking, the common law has always held that the direction of the King might be enforced through the Attorney-General ; but although it might contain an essential part of the so-called bargain between the Crown and the corporation, that did not at law destroy the legal power of the body which the King had created.

[NOTE. In *Riche v. Ashbury Railway, etc., Co., Ltd.* (9 Ex. 224), Blackburn, J., stated (p. 263) : " At common law it is an incident to a corporation to use its common seal for the purpose of binding itself to anything to which a natural person could bind himself, and to deal with its property as a natural person might deal with his own. And further that an attempt to forbid this on the part of the King, even by express negative words, does not bind at law."]

Bowen, L.J., in his judgment, continued as follows—

When you come to corporations created by Statute, the question seems to me entirely different, and I do not think it is quite satisfactory to say that you must take the Statute as if it had created a corporation at common law, and then see whether it took away any of the incidents of a corporation at common law, because that begs the question, and it not only begs the question, but it states what is an untruth, namely, that the Statute does create a corporation at common law. It does nothing of the sort. It creates a statutory corporation, which may or may not be meant to possess all or more or less of the qualities with which a corporation at common law is endowed. Therefore, to say that you must assume that it has got everything which it would have at common law unless the Statute takes it away, is, I think, to travel on a wrong line of thought. What you have to do is to find out what this statutory creature is and what it is meant to do ; and to find out what this statutory creature is you must look at the Statute only, because there, and there alone, is found the definition of this new creature. It is no use to consider the question of whether you are going to classify it under the head of common law corporations. Looking at this statutory creature one has to find out what are its powers, what is its vitality, what it can do. It is made up of persons who can act within certain limits, but in order to ascertain what are the limits, we must look to the Statute. The corporation cannot go beyond the Statute, for the best of all reasons, that it is a simple statutory creature, and if you look at the case in that way you will see that the legal consequences are exactly the same as if you treat it as having certain powers given to it by Statute, and being prohibited from using certain other powers which it otherwise might have had.

The Doctrine of Ultra Vires

(1) A chartered company or common law corporation has all the powers of an individual, and such powers cannot be at law limited by terms in the Charter. But if there are in fact such limitations, and they are infringed, the company might be bound (*B.S.A. Co. v. De Beers Consolidated Mines*, 1910, 1 Ch. 354), but the Crown could take steps through its Attorney-General to repeal the Charter. (*R. v. London Corporation*, 1691, 1 Show., 274.) A member of a Chartered Company is entitled to ask for an injunction to prevent the company doing an act which is outside the scope of the Charter and which might result in the forfeiture of the Charter. (*Jenkin v. Pharmaceutical Society*, 1921, 1 Ch.D. 392.)

(2) Statutory companies have only such powers as are expressly or impliedly conferred by special Act of Parliament.

(3) Registered companies are in the same position and have such powers as are expressly or impliedly conferred by the Memorandum of Association.

As regards (2) and (3), acts *ultra vires*, beyond the powers, are null and void and cannot be ratified by the shareholders.

The regulations of the meetings of a chartered company will be found in its Charter and By-laws, and where the company has subsequently registered under the Companies Act, 1948 (e.g. for the purpose of liquidation), it would be subject to the general provisions of that Act. It may also be wound up compulsorily as an unregistered company. Otherwise the chartered company would be subject to the general law applicable to corporations created by Royal Charter.

CHAPTER II

MEETINGS OF DIRECTORS

A COMPANY, being an incorporeal, intangible entity, but nevertheless with a distinct legal existence quite independent of the members of the company, must necessarily act through agents. The latter are usually called directors, members of council, governing committee, as the case may be, and their powers are defined in Articles of Association, by-laws, or other regulations. They belong to the category of special agents, because their powers are thus specially defined.

RULE 1—DIRECTORS MUST ACT AT A BOARD MEETING

The legal theory is that these powers are given to the whole of the directors, not to any individual director. Hence, the important consequence that directors must meet together in order to discharge their duties. It has, in fact, been said that directors cannot think without meeting. (But see Clause 106, Table A).

Directors, then, must act together as a board. (*D'Arcy v. Tamar Railway Co.*, 1867, L.R. 2 Ex. 158.)

And even when an authority is given to a less number, i.e. a quorum, to bind the whole body, they must meet in some place where all may be present and may have the opportunity of expressing their assent or dissent (per Baron Channell, *ibid.* at p. 162).

In other words, if the quorum is, say, three, and there are six directors, all must receive notice, but if only three attend the business can be transacted. If notice is not given, a quorum might meet at one place and bind the company, and another quorum might meet elsewhere at the same time and bind the company to an opposite decision.

Directors, then, must act at a board meeting unless the regulations otherwise provide, e.g. "a resolution in writing signed by all the directors for the time being entitled to receive notice of a meeting of the directors, shall be as valid and effectual as if it had been passed at a meeting of the directors duly convened and held (Table A, Cl. 106).

Delegation of Powers

If the regulations so authorize, directors can delegate some of their powers to one or more of their number, e.g. a managing director. Similarly, one or more can be appointed a committee, e.g. a committee to approve transfers, a finance committee, and so forth. But express power thus to delegate must be given, since the maxim applicable is "*delegatus non potest delegare*"—an agent cannot delegate to another his authority. (*Howard's case*, 1866, 1 Ch., 561.)

"A committee means a person or persons to whom powers are committed which would otherwise be exercised by another body," and a committee may consist of one person. (*Taurine Co.*, 1884, 25 Ch.D. 118.)

RULE 2—NOTICE MUST BE GIVEN OF BOARD MEETINGS

Obviously directors, if they are to meet together, must receive notice. A director may, and the secretary must at the direction of any director at any time, summon a meeting (T. A., clause 98). Any two directors may instruct the secretary of a statutory company (1845 Act, Sect. 92). If notice is not given, and one or more of the directors are absent in consequence, the proceedings would be invalid. (*Harben v. Phillips*, 1883, 23 Ch.D. 14.)

Exceptions

This rule is subject to the following exceptions—

(a) If a director is abroad, notice need not be given

in the absence of express provision to the contrary. (*Halifax Sugar Co. v. Francklyn*, 1890, 62 L.T. 564.) Clause 98 of Table A is to the same effect.

(b) If the regulations provide for meetings to be held at regular intervals, e.g. fortnightly, or monthly, the time and place being fixed.

But in these cases notice is often sent as a reminder.

(c) If all the directors should meet casually, and are willing to hold a meeting, the meeting can be held notwithstanding the absence of notice. (See *Barron v. Potter*, 1914, 1 Ch. 895; *Smith v. Paringa Mines, Ltd.*, 1906, 2 Ch. 193.)

Exclusion of Director

As the authority of directors is vested in them as a body, they may not prevent one of their number from attending. (*Pulbrook v. Richmond Consolidated Mining Co.*, 1878, 9 Ch.D. 610. *Bainbridge v. Smith*, 1889, 41 Ch.D. 462.)

It follows that notice, if intentionally withheld, may invalidate the proceedings, or an injunction might be obtained to prevent the meeting being held.

It is not necessary to state the business to be transacted at a board meeting (*La Compagnie de Mayville v. Whitley*, 1896, 1 Ch. 788), but usually the secretary forwards with the notice a copy of the agenda paper. This should always be done if special business is to be transacted, in order that a director unable to attend may, if necessary, communicate his views to the board.

RULE 3—THE QUORUM, FIXED BY THE REGULATIONS OR BY THE DIRECTORS, MUST BE PRESENT

The regulations will usually provide for the business to be transacted by a smaller number of directors,

which is termed a "quorum,"¹ and will either fix the quorum or leave it to be fixed by the directors.

In the unusual circumstances of no quorum being fixed, a majority of the directors would be competent to act. (*York Tramways v. Willows*, 1882, 8 Q.B.D. 685.) In the case of a statutory company, one-third at least of the directors must be present (Sect. 92 of the 1845 Act). The directors of a registered company may resolve that one of their number shall be a quorum. (*Fireproof Doors, Ltd.*, 1916, 2 Ch. 142.)

The quorum must consist of persons competent to transact the business before the meeting. It is usual for the regulations to provide that a director interested in any transaction should be unable to vote thereon, and it follows that he could not be counted in the quorum. (*Yuill v. Greymouth-Point Elizabeth Railway*, 1904, 1 Ch. 32.) Section 199 of the Companies Act, 1948, is to the same effect. It provides—

199. (1) Subject to the provisions of this section, it shall be the duty of a director of a company who is in any way, whether directly or indirectly, interested in a contract or proposed contract with the company to declare the nature of his interest at a meeting of the directors of the company.

(2) In the case of a proposed contract the declaration required by this section to be made by a director shall be made at the meeting of the directors at which the question of entering into the contract is first taken into consideration, or if the director was not at the date of that meeting interested in the proposed contract, at the next meeting of the directors held after he became so interested, and in a case where the director becomes interested in a contract after it is made, the said declaration shall be made at the first meeting of the directors held after the director becomes so interested.

(3) For the purpose of this section, a general notice given to the directors of a company by a director to the effect that he is a member of a specified company or firm and is to be regarded as interested in any contract which may, after the date of the notice, be made with that company or firm, shall be deemed to be a sufficient declaration of interest in relation to any contract so made:

Provided that no such notice shall be of effect unless either

¹ QUORUM means the specified number of qualified persons necessary to transact the business of a meeting.

it is given at a meeting of the directors or the director takes reasonable steps to secure that it is brought up and read at the next meeting of the directors after it is given.

(4) Any director who fails to comply with the provisions of this section shall be liable to a fine not exceeding one hundred pounds.

(5) Nothing in this section shall be taken to prejudice the operation of any rule of law restricting directors of a company from having any interest in contracts with the company.

But this disqualification would not enable the directors to exclude the interested director from the meetings. (*Grimwade v. B.P.S. Syndicate, Ltd.*, 1915, 31 T.L.R. 531.)

Directors have sometimes resorted to various expedients to circumvent this salutary rule, as, for instance, by arranging for an "alternate" director to take the place *ad hoc* of the interested director. But the Courts would probably hold in such circumstances that the disqualification of the principal attached to the alternate or agent.

In *re North-Eastern Insurance Co.* (1919, 1 Ch. 198), the company's regulations contained the usual clauses (1) enabling a director to contract with the company, but forbidding him to vote upon such contract, (2) authorizing the directors to fix the quorum.

The quorum was three, and four directors were present at a meeting to approve the issue of debentures, e.g. one debenture to A, and another debenture to B. Both A and B were directors and present at the meeting.

The directors altered the quorum to two, so that there was a competent quorum of disinterested directors. It was held that the resolution to alter the quorum was invalid.

A director disqualified from voting at a board meeting because interested in a particular transaction, could vote as a shareholder at any general meeting at which this transaction was subsequently considered. (*North-West Transportation Co. v. Beatty*, 1887, 12 A.C. 589.)

But directors would not be allowed to appropriate,

by means of their voting power at a general meeting, property belonging to the company. (*Cook v. Deeks*, 1916, 1 A.C. 554.)

In *re Express Engineering Works, Ltd.* (1920, 1 Ch. 466) there was the usual provision that a director could not vote in respect of any contract in which he was interested. All the shareholders were directors, and, at a board meeting at which all the members were present, it was decided to issue debentures to themselves as the purchase consideration for certain property.

It was held that, the transaction being *intra vires* the company, *all* the members being present could bind the company by the contract.

It will be observed that in effect the Court recognized (1) the principle referred to above, viz. that directors as shareholders can vote at a general meeting on a matter on which as directors they were disqualified from voting at a board meeting; and (2) that the question of notice was waived.

This latter concession was emphasized in the subsequent case of *re Oxted Motor Co., Ltd.* (1921, 3 K.B. 32). An extraordinary resolution to wind up voluntarily, of which notice in accordance with Section 69 of the Companies (Consolidation) Act, 1908, had not been given, was held to be valid because *all* the shareholders were present at the general meeting and had waived the informality.

Continuing Quorum

There should be an effective quorum of directors throughout the meeting. The English Courts would doubtless follow the principle of the decision of the Court of Session in *Henderson v. Louttitt & Co.* (1894, 21 Rettie, 674). There it was held that a quorum must not only be present at the commencement of a general meeting, but also at the time when the business is transacted. The case turned on the validity of a resolution

to wind up the company. A sufficient number of members assembled for the meeting, but on learning that a member (a solicitor) who was not qualified to vote, intended to vote, the majority of the members refused to enter upon the business of the meeting and went away, leaving an insufficient quorum. The Lord President observed: "It is impossible to hold that when the word 'quorum' is used it has any other sense than a quorum of effective members—members qualified to take part in and to decide upon questions brought before the meeting. . . . It would be a highly inconvenient, not to say unnatural, meaning to attribute to it (clause 37 of the 1862 Table A) to hold that all that is necessary to the validity of the proceeding is that at the earliest stage of the meeting a quorum should be present, but that after the real business of the meeting is started and under consideration the quorum might go away."

The principle would appear to be equally applicable to meetings of directors. Hence, if a board meeting is duly constituted but subsequently directors leave, so that there is no longer a quorum, no further business should be transacted which fairly required the proper consideration of the board.

There is said to be a "count out" when, the attention of the chairman having been drawn to the withdrawal of more members than leaves a quorum, he takes a "count" and adjourns the meeting.

Continuing Directors

If through death or resignation or other reason the directors fall below the quorum, it was held in the case of a statutory company (*Channel Collieries Trust v. Dover Rly. Co.*, 1914, 2 Ch. 506) that the continuing director could act. The regulations of registered companies usually provide that the continuing director or directors shall meet and appoint directors to fill up any such

“casual” vacancy, but only for that particular purpose. (See *Scottish Petroleum Co.*, 1883, 23 Ch.D. 431.)

Reference can be made to Clause 100 of Table A (page 3), which deals with the matter.

If there is no provision enabling continuing directors to act, a general meeting should be convened to fill the vacancy.

A curious point arose in *Sly, Spink & Co.* (1911, 2 Ch. 430). It was held that where the regulations contained the usual provision for a maximum and minimum number of directors and a quorum had been fixed which was less than the minimum number, continuing directors could not act, although sufficient to form a quorum, *if in fact* the minimum number of directors had never been appointed.

If a director refuses to attend a board meeting so as to prevent a quorum being formed, and so prevents transfers of shares being passed, the Court may order the registration of the transfer. (*Copal Varnish Co.*, 1917, 2 Ch. 349.) With this decision may usefully be compared *Lubin v. Draeger* (1918, 144 L.T. Journal, 274). A, B, and C, the directors, held all the shares between them equally. C was abroad and the quorum was two. A called a meeting at which he alone was present (B refusing to attend) and passed a transfer of shares to D, whom he also appointed a director. The transfer and appointment were held to be invalid.

The Copal Varnish Company's case was distinguished, as there the two directors held all the shares.

Omnia presumuntur rite esse acta¹

Regulations usually contain a provision on the lines of clause 105, Table A, which is as follows—

105. All acts done by any meeting of the directors or of a committee of directors or by any person acting as a director shall, notwithstanding that it be afterwards discovered that there was some defect in the appointment of any such director

¹ All things are presumed to be correctly done.

or person acting as aforesaid, or that they or any of them were disqualified, be as valid as if every such person had been duly appointed and was qualified to be a director.

Accordingly, if business is transacted at a board meeting at which there is no quorum owing to a director being disqualified, a third person can assume that the proceedings were in order. Shareholders would be similarly bound, e.g. to pay a call sanctioned by a disqualified board of directors. (*British Asbestos Co. v. Boyd*, 1903, 2 Ch. 439.)

RULE 4—THE MEETING SHOULD BE PRESIDED OVER BY A CHAIRMAN

The regulations of a registered company may appoint a chairman or leave the appointment to be made by the directors. (Cf. Clause 101 of Table A.)

Section 93 of the Companies Clauses Consolidation Act, 1845, contains the procedure for statutory companies.

The appointment of a director as chairman without an increase in remuneration is not a contract in which the director is interested, but a delegation of powers to him. (*Foster v. Foster*, 1916, 1 Ch. 532.)

In the same case it was decided that a chairman appointed by the directors does not necessarily retain the position so long as he continues to be a director. Accordingly the directors can appoint another chairman.

But an agreement to act as chairman could, like any other contract, be enforced by the chairman in the event of a breach by the directors, and an aggrieved chairman could recover damages. Similarly, an action would lie and damages be recoverable from a chairman who has committed a breach of such agreement. (*British Business Motors, Ltd. v. Edge & S. F. Edge, Ltd.*, "The Times" (*Financial Supplement*), 1914, 23rd March.)

Duties of Chairman

The chairman's duties are—

- (1) *To preserve order.*
- (2) *To take care that the proceedings are conducted in a proper manner.*
- (3) *To see that the views of the directors are properly ascertained with regard to any question before them for consideration.*

The observations of Chitty, J., to the above effect, in *National Dwellings Society v. Sykes* (1894, 3 Ch. 159), although directed to general meetings, are applicable.

- (4) *To see that proper minutes of the proceedings are kept and to sign them.*
- (5) *To adjourn the meeting, if necessary.*
- (6) *To declare the meeting closed.*

The order of the agenda paper can be varied as the directors may determine (*Cawley & Co.*, 1889, 42 Ch.D. 209.)

Proceedings at a Board Meeting

The directors of a registered company must comply with Sect. 145 of the Companies Act, 1948, which provides—

145. (1) Every company shall cause minutes of all proceedings of general meetings, all proceedings at meetings of its directors and, when there are managers, all proceedings at meetings of its managers to be entered in books kept for that purpose.

(2) Any such minute if purporting to be signed by the chairman of the meeting at which the proceedings were had, or by the chairman of the next succeeding meeting, shall be evidence of the proceedings.

(3) Where minutes have been made in accordance with the provisions of this section of the proceedings at any general meeting of the company or meeting of directors or managers, then, until the contrary is proved, the meeting shall be deemed to have been duly held and convened, and all proceedings had thereat to have been duly had, and all appointments of directors, managers or liquidators shall be deemed to be valid.

(4) If a company fails to comply with sub-section (1) of this section, the company and every officer of the company who is in default shall be liable to a default fine.

Statutory companies are governed by similar requirements which are set out in Sect. 98 of the 1845 Act (see p. 5).

Directors' Attendance Book

Before the minutes of the previous meeting are signed by the chairman, the book recording the attendances of directors should be signed by those present. In practice the book is often signed at the conclusion of the meeting, but this is inadvisable, as directors often leave during the meeting.

Persons who are not present technically, e.g. the solicitor, accountant, etc., should also sign. Clause 86 of Table A provides—

Every director present at any meeting of directors or committee of directors shall sign his name in a book to be kept for that purpose.

Agenda Paper and Book

The agenda paper of the meeting (agenda, or "business to be transacted") will usually be pasted in on the left-hand side of a book, the corresponding page, headed "Chairman's notes," being reserved for the chairman's entries of the decision of the directors on the particular items, thus—

- | | |
|---|-------------------------|
| 1. To read the Minutes of Board
Meeting held on——— | Approved and
Signed. |
|---|-------------------------|

The minutes, when signed by the chairman either at the conclusion of the meeting (though this is unusual) or, as is almost invariably the case, at the next meeting, become evidence but not conclusive evidence. Thus, an unrecorded or an incorrectly recorded minute of a resolution could be proved by other evidence, the onus of proof resting with the person who impeaches the entry. (*Indian Zoedone Co.*, 1884, 26 Ch.D. 70.)

"As they were directors, the minute is admissible against them; but none the less does other evidence

appear admissible, though the existence of the minute is a circumstance to be considered in judging of its weight." (*Re Pyle Works*, No. 2, 1891, 1 Ch. 184.)

Alteration of Minutes

The object of the chairman's stereotyped question addressed to his co-directors: "Is it your wish that I should sign these minutes?" is to ascertain that the minutes are a correct record. Any minute that incorrectly or inadequately records any proceeding or resolution can be altered before the minutes are signed by the chairman, the alteration being initialed by him. But a resolution passed at a meeting cannot be deleted or cancelled because in the interval the directors have altered their minds. If, for example, the directors resolved at a previous meeting, held on the 1st inst., that the chairman should go and investigate the company's affairs abroad, and circumstances later rendered the journey unnecessary, the minutes of the meeting held on the 1st inst. would record the resolution as duly passed. At the next meeting a resolution would be passed to the effect that the resolution passed at the Board meeting dated 1st inst., authorizing the chairman, etc., should not at present be acted upon or should be rescinded. The following remarks of Lord Esher, M.R., in the case of *Cawley & Co.*, bear on this point—

Something happened with regard to that resolution which I cannot help thinking was most dangerously irregular; for the secretary, either in consequence of some supposed power vested in him, or of some idea of his own, some time afterwards inserted in the minutes of the meeting of the 18th certain dates as the dates of the calls. In my opinion that was the most dangerous thing that could well be done. Minutes of board meetings are kept in order that the shareholders of the company may know exactly what their directors have been doing, why it was done, and when it was done; and any shareholder, looking at these minutes as they now stand, would suppose the dates were agreed upon at the meeting and were then filled in, whereas, in truth, no dates were agreed on by

the directors at all. The dates formed no part of the resolution, and yet here is the entry made as if they formed part of the resolution then passed. I trust I shall never again see or hear of the secretary of a company, whether under superior directions or otherwise, altering minutes of meetings, either by striking out anything or adding anything. The proper mode of fixing the dates would have been by resolution and then entering that resolution on the minutes. (Per Lord Esher, *M.R., Cawley & Co.*, 1889, 42 Ch.D. 226.)

In 1922 a Scottish company passed an extraordinary resolution that it could not by reason of its liabilities continue, and appointed a liquidator. The company did not act upon the resolution, and a month later passed another resolution, "to rescind or delete from the Minute Book of the company the said resolution." The minute which had been signed was scored through and the signature deleted.

If all that had been in question was a proposal to pass a rescinding resolution, perhaps little or no harm would have been done, because any such resolution would have been a mere *brutum fulmen* (of no effect), and would have left the company where the first resolution placed it, viz., in liquidation. But a proposal to delete the minute containing a resolution to wind up was a much more serious matter, inasmuch as such deletion implied the destruction of the proper evidence of the passing of the liquidation resolution, and consequently of the commencement of the liquidation itself. (Per Lord President in *Grieve v. Kilmarnock Motor Co., Ltd.*, 1923, 60 Sc.L.R., p. 291.)

Confirmation of Minutes

Minutes are confirmed only in the sense that they are found to be accurate. Hence it should be stated that—

"*The minutes of the meeting held on (etc.), were read and signed as a correct record,*" and not "*read and confirmed,*" as the use of the latter word is misleading. If the word "confirmed" is used, it must be understood to mean "verified."

"That word (confirm) sometimes means merely 'verify'; it is commonly used in that sense at the meetings of public bodies who confirm the minutes of their last meeting, not meaning thereby that they

give them force, but merely that they declare them accurate." (Per Campbell, C.J., *Reg. v. Mayor of York*, 1853, 1 E. & B. 594.)

The minutes of directors' meetings are always confirmed at the following meeting. A director who was absent from the meeting of which the minutes are put for confirmation, should not vote.

Inspection of Minute Book

(a) BY SHAREHOLDERS. Unless the regulations otherwise provide, the Minute Book recording the acts and proceedings of directors is not open to inspection by shareholders.

(b) BY A DIRECTOR. Where there are directorial dissensions, the right of a dissentient director to inspect the books often arises. It has been said that a director has no independent right of access, and in support, this dictum of Turner, L.J., in *Nichols' case* (3 De G. and J. 387) is cited—

"Whatever authority is given by shareholders to directors is given to them as a body, and not to each of them individually."

Accordingly it is argued that a director has only such powers as the rest of the board may delegate to him. But in *Burn v. London and South Wales Coal Co.* (1890, 7 T.L.R. 118), North, J., held that a director has a right to inspect and take copies of any documents or books of the company, and this by right of his office as director. He stated that a director has a right to see and take copies of documents belonging to his company and not at meetings only, for the object of a director's having access was that he might be prepared at meetings.

It is submitted that directors cannot deprive one of their number of his right of access to their Minute Book, unless that right is to be exercised adversely to the interests of the company.

Liability of Directors

A director present at a meeting where the minutes are signed, but who was not present at the previous meeting, would not on that account be responsible for what was resolved upon at the previous meeting.

In *Burton v. Bevan* (1908, 2 Ch. 240), it was held that a director was not responsible for acts done at a board meeting and which were complete without further confirmation merely because he voted for the confirmation of the minutes.

In July, 1889, the directors of the Lands Allotment Co., Ltd., passed a resolution to invest £5,200 in shares of the B. S. Company. Two directors, Brock and Theobald, were not present at the meeting. At another board meeting held in October, the minutes were confirmed, Brock and Theobald being present. Brock signed the minutes as chairman. The investment was *ultra vires*, and in the liquidation of the Lands Allotment Co. it was sought to make the directors liable to repay the amount of the illegal investment. It was shown that Brock had really taken an active part in the transaction and stated at a subsequent general meeting that "we carefully considered the matter and deemed it advisable to exercise our right of subscription and have no reason to regret our decision."

The Court of Appeal held that (1) Theobald was not liable, as he knew nothing about the investment, and could not be said to have adopted or ratified it merely because he was present at the meeting when the minutes were confirmed; and (2) Brock was liable. (*In re Lands Allotment Co.*, 1894, 1 Ch. 616.)

Non-Attendance at Meetings

A director is not bound to attend every meeting of the directors. "It is not part of the duty of a director to take part in every transaction which is considered at a board meeting." (*Perry's case*, 1876, 34 L.T. 716.)

“Neglect or omission to attend meetings is not the same thing as neglect or omission of a duty which ought to be performed at those meetings.” (*Marquis of Bute’s case*, 1892, 2 Ch. 101.)

Lord Hardwicke once observed that if persons are guilty of gross non-attendance and leave the management entirely to others, they may be guilty of the breaches of trust that are committed by the others. But the modern doctrine is to be found in such cases as *in re Denham & Co.* (1883, 25 Ch.D. 752), where a director who had not attended a board meeting for four years was held not to be personally responsible for fraudulent reports and balance sheets.

To hold otherwise would, in effect, be to fix the absentee with liability for the neglect and omissions of other people. But if the absentee director is aware that things are going wrong, e.g. that board meetings are not being held or duties which ought to be discharged at such meetings are not being performed, a question of liability might arise although, obviously, difficult to prove.

Under Sect. 448 of the Companies Act, 1948, the Court may relieve a director of liability where proceedings are brought against him for negligence if it appears that he has acted honestly.

Statutory Companies

Sect. 100 of the 1845 Act provides—

“No director, by being party to or executing in his capacity of director any contract or other instrument on behalf of the company, or otherwise lawfully executing any of the powers given to the directors, shall be subject to be sued or prosecuted, either individually or collectively, by any person whomsoever; and the bodies or goods or lands of the directors shall not be liable to execution of any legal process by reason of any contract or other instrument so entered into,

signed, or executed by them, or by reason of any other lawful act done by them in the execution of any of their powers as directors; and the directors, their heirs, executors and administrators, shall be indemnified out of the capital of the company for all payments made or liability incurred in respect of any acts done by them, and for all losses, costs, and damages which they may incur in the execution of the powers granted to them; and the directors for the time being of the company may apply the existing funds and capital of the company for the purposes of such indemnity, and may, if necessary for that purpose, make calls of the capital remaining unpaid, if any."

Defamatory Statements at Board Meetings

"There are certain relations of life in which the law regarded it as important that people should speak honestly, without fear of legal action. Directors of a company had a duty to discuss the affairs of their company, and might discuss the conduct of the company's officials, so long as they did so honestly. That was a privileged occasion. If, however, a director did not use but abused the occasion by showing malice or spite, the privilege was gone." (*Allan v. Clarke*, "The Times," 17th Jan., 1912.)

A board meeting being a privileged occasion, defamatory statements made thereat are, therefore, not actionable, unless the plaintiff can prove that the defendant director spoke the words maliciously, for example, intending to pay off grudges against him.

I think the question is, whether he is using the occasion honestly or abusing it. . . . If a person on such an occasion states what he knows to be untrue, no one ever doubted that he would be abusing the occasion. But there is a state of mind, short of deliberate falsehood, by reason of which a person may properly be held to have abused the occasion, and in that sense to have spoken maliciously. If a person from anger or some other wrong motive has allowed his mind to get into such a state as to make him cast aspersions on other people,

reckless whether they are true or false, it has been held, and I think rightly held, that a jury is justified in finding that he has abused the occasion. (Per Lord Esher, M.R., *Royal Aquarium v. Parkinson*, 1892, 1 Q.B. 443.)

Applying the same principle, a lady sanitary inspector of a borough council obtained damages against the medical officer who had, at a council meeting, criticized maliciously her methods.

In an unreported case, the chief clerk to the Royal Arsenal Co-operative Society, Ltd., brought an action for slander against the auditor of the society. The plaintiff and defendant both attended a meeting of the general committee of the society, and the plaintiff stated that he had twice passed the examination for the auditing certificate of the Co-operative Union, and held "pass" and "distinction" certificates. The defendant challenged this statement and stated that he was an examiner and that plaintiff did not possess a distinction certificate.

The plaintiff obtained £300 damages.

Liability of Printer

In the case of non-trading companies, minutes are sometimes printed and circulated. The printer of minutes containing defamatory statements made at a meeting of a committee of a School Board was held responsible in damages, and also the member of the School Board who made the statement. (*Johnson v. Hazell & Co.*, "The Times" newspaper, 1890, Jan. 22.) "There was no question of malice. Yet if one man published a libel of another he was liable to pay damages." (Per Field, J.) For this reason shareholders' statements supporting their own proposed resolutions will not be circulated if they appear to contain libellous matter. (See p. 86).

Committee Meetings

The regulations usually give power to directors to

delegate any of their duties to a committee, i.e. the person or persons to whom such powers as otherwise would be exercisable by the Board are committed. The powers and authority of the committee should be carefully defined at the time of appointment.

REGISTERED COMPANIES. The Articles will be found to contain provisions on the lines of Table A, clauses 102 and 103—

102. The directors may delegate any of their powers to committees consisting of such member or members of their body as they think fit; any committee so formed shall in the exercise of the powers so delegated conform to any regulations that may be imposed on it by the directors.

103. A committee may elect a chairman of its meetings; if no such chairman is elected, or if at any meeting the chairman is not present within five minutes after the time appointed for holding the same, the members present may choose one of their number to be chairman of the meeting.

Usually the chairman of directors is *ex officio* appointed chairman of committees.

Questions arising at any meeting are determined by a majority of votes, and in case of equality, the chairman would have, by the Articles, a casting vote.

STATUTORY COMPANIES. The procedure of committees and their powers and appointment are dealt with in Sects. 95 and 96 of the 1845 Act (*vide supra*, pp. 4-5).

QUORUM. If the directors of a registered company do not fix the quorum, and the Articles do not deal with the point, the quorum must consist of all the members of the committee. (*Liverpool Household Stores*, 1890, 59 L.J., Ch. 616.)

In the case of a statutory company there must be present the prescribed quorum, or "if no quorum be prescribed (i.e. by the Special Act), then a quorum to be fixed for that purpose by the general body of directors, and at all times of the committees one of the members present shall be appointed chairman."

The Committee System

The directors usually conduct a great deal of business in committee, either a standing committee appointed at the first meeting of the board, or a special committee to consider and report on special business, e.g. the appointment of a secretary. The business referred to the committee thus receives greater attention than is possible with a large number of directors. On the other hand, there is sometimes a tendency to delegate to a committee business which might more advantageously be considered by the board.

The result of the deliberations of a committee may take the form of a report, which is submitted for adoption at the board meeting, or the minutes of the committee will be submitted. Thus, in the latter case, the chairman of the committee, if present, would move that the minutes be adopted and the chairman of the board would put the motion to the board. The board is not bound, of course, in any way by the proceedings in committee, until adopted, unless executive powers were entrusted to the committee, and so it may be moved, "That the minutes of the — committee be received." If this motion is passed, it would be followed by the motion, "That the minutes of the — committee be adopted." Where a report is presented by a committee, the chairman of the committee will move, "That the report of the — committee be received and approved." If there is likely to be a rejection of the report, the first motion should be, "That the report be received." If this is not carried, the business falls to the ground. Usually a report which does not command the unanimous support of the board would be received and adopted subject to further consideration by the committee (the matter being re-committed), or the report may be adopted except as regards certain recommendations.

The report, however, is that of the committee, and

any proposed alterations or additions should be effected by the committee and not by the board. The usual form of motion referring back would be, "That the report of [or the proceedings of] the — committee be referred back for further consideration."

This reference back may be accompanied by specific directions and instructions, or, alternatively, the committee are given full power to deal with the matter as they may determine.

Precedents

NOTICE OF MEETING

AB COMPANY, LTD.,

Address.....

Date.....

SIR,

A Meeting of the Directors of the above-named Company will be held at the registered office on.....
at o'clock in the.....noon.

To.....Esq.

CD, *Secretary*.

AB COMPANY, LTD.,

Address.....

Date.....

SIR,

I have been instructed by the Chairman (or by Mr.....
to convene a Special Meeting of the Directors of the above-named Company at the registered office on.....
at o'clock in the.....noon.

To.....Esq.

CD, *Secretary*.

SPECIAL BUSINESS

To consider a letter from the EF Company, Ltd., containing the terms upon which the latter Company will subscribe for the unissued Share Capital.

AGENDA

(FIRST BOARD MEETING OF PRIVATE COMPANY)

- i. The Secretary pro tem. (or the Solicitor) to report the incorporation of the Company.

2. To appoint the Secretary.
3. To appoint the Solicitor.
4. To appoint the Banker.
5. To appoint the Auditor.
6. To approve the Common Seal.
7. To consider and approve the terms of the Sale Agreement.
8. To fix the quorum for a Board Meeting.
9. To approve terms of Circular Letter to Customers notifying the conversion of the business.

The above list is not exhaustive, but includes the usual business transacted at the first meeting. In the case of an "exempt private company," if it is intended to apply for exemption from Sect. 127 of the Companies Act, 1948, which requires all companies—public and private—to file the Balance Sheet with the Annual Return, the agenda should deal with the matter.

AGENDA

(SUBSEQUENT BOARD MEETING OF PRIVATE COMPANY)

1. To approve the Minutes of the Board Meeting held
2. The Solicitor to produce the Sale Agreement and the requisite Conveyance for execution.
3. To allot Shares to the Vendor pursuant to the Sale Agreement.
4. To receive applications for Shares.
5. To produce Banker's Pass Book and to draw the following cheques—

AB, £50.

CD, £17 10s.

EF, £5 5s.

As already stated (p. 17), this agenda will usually be pasted or written in an agenda book, with space provided for the chairman's notes. These notes will supplement the notes of the proceedings taken by the secretary.

MINUTES

(FIRST BOARD MEETING OF A PRIVATE COMPANY)

First Meeting of the Directors of the AB Company, Ltd.,
held at the Registered Office on.....
the.....at..... o'clock in the noon.

Present : A, B, C, Directors.

In attendance : D, the Solicitor.

E, the Secretary.

Chairman. Resolved that Mr. A be appointed Chairman (or Mr. A occupied the Chair in accordance with Clause of the Articles of Association).

Incorporation. The Secretary (or the Solicitor) reported that the Company was incorporated on the..... and produced the Certificate of Incorporation.

Secretary. Resolved that Mr be appointed Secretary of the Company at the remuneration of £..... per annum subject to three months' notice on either side. The necessary Agreement to be prepared by the Solicitor.

Solicitor. Resolved that Messrs..... be appointed Solicitors of the Company, and the Secretary was instructed to notify Messrs..... of their appointment.

Banker. Resolved that..... be appointed Bankers of the Company and that cheques drawn on the Company's account be signed by two Directors and countersigned by the Secretary.

Auditor. Resolved that Messrs of be appointed Auditors to hold office until the first Annual General Meeting.

Common Seal. Resolved that the Seal produced by the Secretary be approved and adopted as the Common Seal of the Company.

Resolved that the Common Seal be affixed only in the presence of two Directors and the Secretary.

Sale Agreement. The Solicitor produced the Draft Sale Agreement (or an engrossment of the Sale Agreement) referred to in the Memorandum of Association which was approved.

Quorum. Resolved that the Quorum for a Board Meeting be two.

Circular to Customers. The Secretary produced a Draft Circular in which customers of the Vendor's business were notified that the said business had been acquired by the Company.

Accounts. Resolved that, pursuant to Sect. 129 of the Companies Act, 1948, the company should become an "exempt private company" by complying with that section and with the Seventh Schedule of the Act.

AGENDA

(FIRST BOARD MEETING OF PUBLIC COMPANY)

1. To report registration of Company.
2. To appoint a Chairman.
3. To fix the Quorum.
4. To appoint the Secretary and Assistant Secretary.
5. To appoint the Solicitor.
6. To appoint the Banker.
7. To appoint the Auditor.
8. To approve the Seal.
9. To approve draft Prospectus.

MINUTES

(FIRST BOARD MEETING OF PUBLIC COMPANY)

Minutes of the Board Meeting held at Registered Office
on... the . . . , at . . . o'clock in the . . . noon.

Present : (Names of Directors.)

In attendance : (Name of Secretary, Solicitor, etc.)

1. The Secretary produced Certificate of Incorporation dated . . . , and reported that all the Directors present (being persons named in the Articles of Association as the Directors of the Company) had signed the usual acceptance of office and had applied for the necessary qualification shares.

2. Mr. A took the Chair pursuant to the Articles of Association.

Or

[*Resolved :* That Mr. A be appointed Chairman of the Board.]

3. *Resolved :* That three Directors shall constitute a quorum at all Board Meetings.

4. *Resolved :* That Mr. Henry Bence, of Nottingham, be and he is hereby appointed Secretary to the Company, the appointment to be subject to six months' notice on either side, and the remuneration to be at the rate of £600 per annum.

Or

Resolved : That the appointment of Mr. William Rice, of Birmingham, as Secretary of the Company be, and the same is hereby confirmed, the appointment to be subject to six months' notice on either side, and the remuneration to be at the rate of £750 per annum.

Resolved : That Mr. Reginald Allen be appointed Assistant Secretary to the Company at an annual salary of £400, the appointment to date from the . . . , and to be terminable by three months' notice on either side.

5. *Resolved :* That Messrs. Jones & Wickham of 6 Gray's Inn, W.C.1, be and they are hereby appointed Solicitors to the Company.

6. *Resolved* : That the Midland Bank, Ltd. (Holborn Branch) be and they are hereby appointed bankers to the Company.

Resolved : That all cheques drawn on behalf of the Company and all acceptances in its name be signed by two Directors and countersigned by the Secretary, and that a copy of this Resolution together with specimen signatures of the Directors and Secretary be furnished to the bankers.

7. *Resolved* : That Messrs. Brown & Johnson of 4 Staple Inn, Holborn, W.C.2, be and they are hereby appointed Auditors to the Company.

8. *Resolved* : That the Common Seal, an impression whereof is affixed to these Minutes, be and is hereby adopted as the Common Seal of the Company.

Resolved : That a key of one of the locks to the Company's Seal be given into the possession of the Chairman, that a key of the other lock be retained by the Secretary, and that the duplicate keys be kept at the Company's office in a sealed packet, to be used in case of emergency, under the control of the Chairman of any Meeting.

9. The Solicitor produced draft of the proposed Prospectus to be issued inviting applications for Shares, and it was

Resolved : That the draft Prospectus as prepared and initialed by the Chairman for identification be approved, and that it be issued to the public, and advertised twice in *The Times*, *Daily Telegraph*, and *Financial Times*.

MINUTES

(SUBSEQUENT BOARD MEETING OF PUBLIC COMPANY)

Passing of Minutes, etc., followed by—

1. The Secretary reported that he had communicated to the Midland Bank the resolution of the Board as to their appointment as Bankers to the Company and the Bankers had been duly furnished with the signatures of the Directors and Secretary.

2. The Chairman reported that the Prospectus had been filed and publicly advertised, and that all the Preference and Ordinary Shares offered for subscription had been applied for by the public.

Resolved : That Preference Shares numbered to inclusive and Ordinary Shares numbered to inclusive be allotted to the applicants as per the allotment lists submitted by the Secretary.

3. *Resolved* . That the Agreement of be and the same is hereby adopted on behalf of the Company, and that the confirmatory Agreement produced by the Solicitor be and the same is hereby approved, and that the Seal of the

Company be affixed thereto pursuant to the Articles of Association.

4. *Resolved* : That 500 Debentures of £100 each, constituting a floating charge on all the Company's assets, be offered to the public for subscription at the rate of 97 per centum, such Debentures to bear interest at the rate of £5 per centum per annum, and to be redeemed at par on the day of 19 , or before at the option of the Company.

5. *Resolved* : That a call be and is hereby made of 2s. 6d. per share on the Ordinary Shares of the Company and that holders of such Shares be requested to pay the same to the Company's Bankers on or before the day of 19 .

6. *Resolved* : That the following Transfers be approved and that the necessary Certificates be issued under the Seal of the Company.

Resolved : That (state number) Transfers, particulars of which appear on folio of the Register of Transfers, and which are numbered to be and are hereby approved.

Resolved : That the Company's Seal be affixed to the following Certificates, viz.—

Nos. to in favour of the transferees of the said Transfers.

Nos. to , being Balance Certificates in favour of the transferors of the Transfers numbered to .

CHAPTER III

MEETINGS OF SHAREHOLDERS: THE STATUTORY MEETING

THE meetings of shareholders of a registered company may be classified as follows—

- (1) The statutory meeting.
- (2) The annual general meeting.
- (3) Extraordinary general meetings.
- (4) Class meetings.

Sect. 130 of the Companies Act, 1948, provides—

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 sub-section 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, or, where there are less than two directors, by the sole director and manager, and shall state—

(a) The total number of shares allotted, distinguishing shares allotted as fully or partly paid up otherwise than in cash, and stating in the case of shares partly paid up the extent to which they are so paid up, and in either case the consideration for which they have been allotted ;

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

(c) An abstract of the receipts of the company, 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.

The section applies to companies limited by shares and to companies limited by guarantee having a share capital, but not to unlimited companies, nor to private companies.

Date

The meeting must be held not earlier than one month ("calendar month"—Interpretation Act, 1889) from the date at which the company is entitled to commence business. A public company must comply with Sect. 109 before it can obtain a certificate entitling it to commence business. Default in holding the statutory meeting may result in a compulsory winding-up order (Sect. 222) as well as the heavy penalty under Sect. 130 (9).

Notice and Statutory Report

The notice must state that the meeting is to be the statutory meeting (*Gardner v. Iredale*, 1912, 1 Ch. 700), and should be sent to all the members of the company as the statutory meeting is "a general meeting of the members" (Sect. 130).

A form of notice is given on pp. 38-9.

The report must be forwarded at least fourteen days before the meeting to every member of the company.

This means clear days, i.e. fourteen days must intervene between the two dates, viz., the date the notice is served and the date of the meeting. Sunday would be included in calculating the interval.

Filing the Report

The report must be filed by every public company limited by shares and by every guarantee company which has a share capital. A private company is expressly exempted from the requirements of Sect. 130, and need not hold the statutory meeting. The first general meeting of a private company would, therefore, be pursuant to Sect. 131.

Default in filing the report may, in addition to the penalty under Sect. 130 (9), also result in the compulsory winding-up of the company (Sect. 222 of the Companies Act, 1948), and the directors may be ordered to pay the costs. The winding-up petition may not be made before the expiration of fourteen days after the last day on which the meeting ought to have been held and may only be made by a shareholder. (Sect. 224, Sub-sect. 1.)

Proceedings

Only shareholders, of course, can attend the meeting, and are at liberty to discuss any matter relating to the formation of the company or arising out of the Statutory Report, whether notice has been given or not of the points they may wish to raise. But no resolution can be passed unless notice has been given in accordance with the Articles. To enable this to be done, Sub-sect. 8 of Sect. 130 contains a provision, enabling "the meeting" to adjourn in order that any resolution of which notice has been given either before or subsequently to the former meeting, may be passed. This right of the statutory meeting to adjourn instead of the usual right given to the chairman, distinguishes the procedure from that at other general meetings.

Statutory Companies

There is no requirement in the Companies Clauses Act, 1845, similar to Sect. 130 of the Companies Act, 1948, but under Sect. 66 of the 1845 Act, the first general meeting must be held within the prescribed time (i.e. prescribed by the special Act), "or if no time be prescribed, within one month after the passing of the special Act." (See p. 43.)

Precedents**NOTICE AND AGENDA FOR STATUTORY MEETING
OF A PUBLIC COMPANY**

.....COMPANY, LTD.

Address.....

NOTICE IS HEREBY GIVEN that in accordance with the provisions of Section 130 of the Companies Act, 1948, the Statutory Meeting of this Company will be held at on the day of 19..., at o'clock in the noon.

A copy of the Statutory Report pursuant to the Act is sent herewith.

A member entitled to attend and vote is entitled to appoint a proxy to attend and vote instead of him, and such proxy need not be a member of the company.

By Order of the Board,

.....
Secretary.

AGENDA

Read. Notice convening the Meeting and the Statutory Report, unless taken as read.

Chairman. To explain that the Meeting has been convened pursuant to Section 130 of the Companies Act, 1948.

Chairman. To explain the general position of the Company and to reply to any questions arising out of the Report or relating to the formation of the Company.

MINUTES OF STATUTORY MEETING

Minutes of the Statutory Meeting of the Company, Ltd., held at, etc.

Present : AB, *Chairman.*
CD, }
EF, } *Directors.*

In attendance : GH, *Solicitor.*
IJ, *Secretary.*

The Secretary read the notice convening the Meeting and the Statutory Report having been forwarded to the Members was taken as read.

The Chairman stated that the Meeting was called to comply with the Act and that a list showing the names and other particulars of the members of the Company was available for inspection.

The Chairman explained the general position of the Company and invited questions relating to the formation of the Company or arising out of the Statutory Report.

After a brief discussion the meeting terminated with a vote of thanks to the Chairman, who duly replied, and the proceedings then terminated.

CHAPTER IV

THE ANNUAL GENERAL MEETING

SECTION 131 of the Companies Act, 1948, provides—

131. (1) Every company shall in each year hold a general meeting as its annual general meeting in addition to any other meetings in that year, and shall specify the meeting as such in the notices calling it; and not more than fifteen months shall elapse between the date of one annual general meeting of a company and that of the next:

Provided that, so long as a company holds its first annual general meeting within eighteen months of its incorporation, it need not hold it in the year of its incorporation or in the following year.

(2) If default is made in holding a meeting of the company in accordance with the foregoing subsection, the Board of Trade may, on the application of any member of the company, call, or direct the calling of, a general meeting of the company and give such ancillary or consequential directions as the Board think expedient, including directions modifying or supplementing, in relation to the calling, holding and conducting of the meeting, the operation of the company's articles; and it is hereby declared that the directions that may be given under this subsection include a direction that one member of the company present in person or by proxy shall be deemed to constitute a meeting.

(3) A general meeting held in pursuance of the last foregoing subsection shall, subject to any directions of the Board of Trade, be deemed to be an annual general meeting of the company; but, where a meeting so held is not held in the year in which the default in holding the company's annual general meeting occurred, the meeting so held shall not be treated as the annual general meeting for the year in which it is held unless at that meeting the company resolves that it shall be so treated.

(4) Where a company resolves that a meeting shall be so treated, a copy of the resolution shall, within fifteen days after the passing thereof, be forwarded to the registrar of companies and recorded by him.

(5) If default is made in holding a meeting of the company in accordance with subsection (1) of this section, or in complying with any directions of the Board of Trade under subsection (2) thereof, the company and every officer of the company who is in default shall be liable to a fine not exceeding

fifty pounds, and if default is made in complying with subsection (4) of this section, the company and every officer of the company who is in default shall be liable to a default fine of two pounds.

The annual meeting must be held once in every calendar year (between 1st January and 31st December) and must be specified. There must not be a longer interval than fifteen months from the date of the previous general meeting. Thus, it is not possible to hold the annual meeting on (say) 1st January, and the next meeting on (say) 31st December of the following year.

In the case of a new company the meeting must be held within eighteen months from the date of incorporation. Accordingly a company incorporated in January, 1948, may hold its first annual meeting in June, 1949. The Annual Return would normally not be required in respect of the years 1948 and 1949. (Sect. 124.)

Penalties

The company, and every officer in default, is liable to a fine not exceeding fifty pounds. The Board of Trade may also direct the holding of the meeting.

In the case of *Smedley v. Registrar of Companies*, 1919 (1 K.B. 97), proceedings were begun on 18th June, 1918, against a director for not holding a general meeting during the year 1917. The last general meeting was held on 21st March, 1916. The information had to be laid within six months after the commission of the offence. It was held by a Divisional Court that the Act created two separate offences—(1) not holding the meeting in the year (1917); and (2) not holding it within fifteen months after the last meeting.

The offence with which the director was charged, viz., not holding a general meeting within the calendar year, was not committed until after 31st December. Consequently, the information was laid within the required period of six months, i.e. before 30th June.

Proceedings of General Meeting

The regulations of a registered company dealing with notice of and proceedings at general meetings usually follow the lines of Table A, Clauses 50 to 73, of which Clauses 50, 52, 57, and 58 are as follows—

NOTICE OF AND PROCEEDINGS AT GENERAL MEETINGS

50. An annual general meeting and a meeting called for the passing of a special resolution shall be called by twenty-one days' notice in writing at the least, and a meeting of the company other than an annual general meeting or a meeting for the passing of a special resolution shall be called by fourteen days' notice in writing at the least. The notice shall be exclusive of the day on which it is served or deemed to be served and of the day for which it is given, and shall specify the place, the day and the hour of meeting and, in case of special business, the general nature of that business, and shall be given, in manner hereinafter mentioned or in such other manner, if any, as may be prescribed by the company in general meeting, to such persons as are, under the regulations of the company, entitled to receive such notices from the company:

Provided that a meeting of the company shall, notwithstanding that it is called by shorter notice than that specified in this regulation, be deemed to have been duly called if it is so agreed—

(a) in the case of a meeting called as the annual general meeting, by all the members entitled to attend and vote thereat; and

(b) in the case of any other 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 95 per cent in nominal value of the shares giving that right.

52. All business shall be deemed special that is transacted at an extraordinary general meeting, and also all that is transacted at an annual general meeting, with the exception of declaring a dividend, the consideration of the accounts, balance sheets, and the reports of the directors and auditors, the election of directors in the place of those retiring and the appointment of, and the fixing of the remuneration of, the auditors.

57. The chairman may, with the consent of any meeting at which a quorum is present (and shall if so directed by the meeting), adjourn the meeting from time to time and from place to place, but no business shall be transacted at any adjourned meeting other than the business left unfinished at the meeting from which the adjournment took place. When a meeting is adjourned for thirty days or more, notice of the

adjourned meeting shall be given as in the case of an original meeting. Save as aforesaid it shall not be necessary to give any notice of an adjournment or of the business to be transacted at an adjourned meeting.

58. At any general meeting a resolution put to the vote of the meeting shall be decided on a show of hands unless a poll is (before or on the declaration of the result of the show of hands) demanded—

(a) by the chairman; or

(b) by at least three members present in the person or by proxy; or

(c) by any member or members present in person or by proxy and representing not less than one-tenth of the total voting rights of all the members having the right to vote at the meeting; or

(d) by a member or members holding shares in the company conferring a right to vote at the meeting being shares on which an aggregate sum has been paid up equal to not less than one-tenth of the total sum paid up on all the shares conferring that right.

Unless a poll be so demanded a declaration by the chairman that a resolution has on a show of hands been carried or carried unanimously, or by a particular majority, or lost and an entry to that effect in the book containing the minutes of the proceedings of the company shall be conclusive evidence of the fact without proof of the number or proportion of the votes recorded in favour of or against such resolution.

Statutory Companies

Sects. 66 and 67 of the Companies Clauses Act, 1845, provide—

GENERAL MEETINGS

ORDINARY MEETINGS TO BE HALF-YEARLY

66. The first general meeting of the shareholders of the company shall be held within the prescribed time, or, if no time be prescribed, within one month after the passing of the special Act, and the future general meetings shall be held at the prescribed periods, and if no periods be prescribed, in the months of February and August in each year, or at such other stated periods as shall be appointed for that purpose by an order of a general meeting; and the meetings so appointed to be held as aforesaid shall be called "ordinary meetings"; and all meetings, whether ordinary or extraordinary, shall be held in the prescribed place, if any, and if no place be prescribed, then at some place to be appointed by the directors.

BUSINESS AT ORDINARY MEETINGS

67. No matters, except such as are appointed by this or the special Act to be done at an ordinary meeting, shall be transacted at any such meeting, unless special notice of such matters has been given in the advertisement convening such meeting.

As already noted (p. 37) the first general meeting in Sect. 66 corresponds to the statutory meeting of a registered company held in accordance with Sect. 130 of the 1948 Act.

Wharncliffe Meeting

This is "a meeting of a company held in compliance with Standing Orders 62-66 of both Houses of Parliament, to obtain the consent of the proprietors to a private Bill which is either promoted by the company, or confers upon it powers to do some act which is not authorized by the existing powers. The Standing Orders were first made in the House of Lords in 1858 at the instance of Lord Wharncliffe, and were adopted, *mutatis mutandis*, by the House of Commons." (Wharton's *Law Lexicon*, 909.)

A meeting of a statutory company to issue new capital would be an example.

Authentication by Seal

Sect. 9 of the Companies Clauses Act, 1845, provides that the Register of Shareholders "shall be authenticated by the Common Seal of the company being affixed thereto; and such authentication shall take place at the first ordinary meeting or at the next subsequent meeting of the company, and so from time to time at each ordinary meeting of the company."

CHAPTER V

NOTICE OF GENERAL MEETING

THE rules regarding the giving of notice may be stated as follows—

1. Notice must be Given in Accordance with the Companies Act and Regulations of the Company

An annual general meeting may be called by twenty-one days' notice in writing, and any other meetings, except one for passing a special resolution, may be called by fourteen days' notice. In the case of *statutory* companies, the period is fourteen days, and notice must be given by advertisement (Sect. 71, 1845 Act). Here the notice is given on the day the advertisement appears, but that day and the day of the meeting must be excluded in computing the interval. (*Mercantile Investment Co. v. International Co. of Mexico*, 1893, 1 Ch. 484.)

The advertisement should appear in a paper circulating where the principal place of business is situated. No notice is required of an adjourned meeting unless the regulations so provide. (*Swansea Dock v. Levien*, 20 L.J., Ex. 447.)

All notices convening the annual general meeting must so specify it. (Sect. 131).

2. The Meeting must be Convened by the Directors at a Meeting of Directors

A director may instruct the secretary to call a board meeting, but not a general meeting. "By article 56 of the company's : : 'the directors may, whenever they think fit, call an extraordinary meeting.' That means, I apprehend, that the directors may do it at a meeting properly convened. I do not think it means that any director may, without consulting the

others, call an extraordinary meeting." (Per Lindley, L.J., *Browne v. La Trinidad*, 1887, 37 Ch.D. 17.) But the articles may expressly provide that a resolution signed by the directors without meeting shall be as effective as a resolution passed at a board meeting. In such circumstances a formal meeting of the board to call an extraordinary meeting would not be necessary.

In *Haycraft Gold Reduction Co.* (1900, 2 Ch. 230), a general meeting had been called without instructions by the secretary, and it was held that an extraordinary resolution passed by the company was invalid.

In such circumstances, prior to the holding of the meeting, the directors can meet and ratify the invalid notice. (*Hooper v. Kerr, Stuart & Co.*, 1900, 83 L.T. 729.)

"The question is whether, if the notice was not authorized beforehand, it has been so ratified now as to make it a good and valid notice. In my opinion it has. The principle of the cases, which I do not propose to go through, is that the ratification of an act is to be done by an agent on your behalf, dates back to the performance of the act." (Per Cozens-Hardy, J., at p. 730.)

3. Notice must be Given to the Persons Entitled to Receive it

The election being by a definite body, on a day of which till summons the electors had no notice, they were all entitled to be specially summoned, and if there were any omission to summon any of them, unless they all happened to be present, or unless those not summoned were beyond summoning distance, there would not be a good electoral assembly; and even an unanimous election by those who did attend would be void. (Per Lord Campbell, *Smyth v. Darley*, 1849, 2 H.L.C. 789.)

Hence, to obviate the serious consequences of an inadvertent omission to give notice, the regulations usually provide that such accidental omission shall not invalidate the proceedings (*cf.* Clause 51 of Table A). But if all the persons entitled to receive notice are in fact present, any informality as to notice may

be waived. (*In re Oxted Motor Co.*, 1921, 3 K.B. 32.) And now, by Sect. 141 (2) of the Act, it is 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."

The same percentage (95 per cent) can also agree and regularize "any other meeting convened by less than fourteen days' notice." (Sect. 133.)

Generally speaking, the shareholders entitled to receive notice must be the registered members, but certain members, e.g. preference shareholders, may not be entitled to attend the general meeting. And the regulations may provide that a person entitled to a share in consequence of the death or bankruptcy of a member shall receive notice (*cf.* Clause 133 of Table A). In such cases the executor, administrator, or trustee in bankruptcy of a shareholder must be notified.

It is the duty of the representatives of a deceased member to give notice of his death to the company at the earliest possible opportunity; and if they wish the company not to go on treating him as still on the books, it is the duty of the executors to give notice to the company of their desire to become members in his place. (*Per Davey, L.J., New Zealand Gold Extraction Co. v. Peacock*, 1894, 1 Q.B. 633.)

Executors, administrators, or trustees in bankruptcy usually become members by sending in a letter of request which must be "distinct and intelligent." (*Buchan's case*, 4 App. Cas., 549.)

The Companies Act, 1948, Sect. 162, contains a new provision requiring notice of all general meetings to

be given to the auditors of the company. (*Cf.* clause 134 of Table A.)

4. The Time and Place must be Reasonable

They (the directors) have appointed a day for the meeting which, under Article 47, they are entitled to do, but they have done it at such a time and in such a manner as make it impossible for the plaintiffs to have their votes recorded. . . . I think the plaintiffs are entitled to the injunction they ask for. (Per Sir James Bacon, V.C., *Cannon v. Trask*, 1875, 20 Eq. 669.)

5. Notice must Fairly State the Nature of any Special Business

The regulations will usually define "ordinary business" as in Clause 52 of Table A, which provides that declaring dividend, considering the accounts, and balance sheets, and the reports of the directors and auditors, the election of directors, appointing and fixing the remuneration of the auditors, constitute ordinary business.

It is not necessary, although usual, to specify details of these ordinary routine matters, which are dealt with every year, in the notice convening the meeting.

Special business means all business transacted at an extraordinary meeting, and (subject to the regulations) business transacted at an ordinary meeting not included in the ordinary business previously mentioned. Special business must be fairly disclosed in the notice.

In *Kaye v. Croydon Tramways Co.* (1898, 1 Ch. 358), the Company proposed to sell its undertaking to the British Electric Traction Co., and in addition to the purchase price, a substantial sum by way of compensation for loss of office was to be paid to the directors and secretary. The notice did not refer to this proposal but merely stated that the meeting was called "for the purpose of considering, and if thought advisable, of approving, the terms of an agreement between the Croydon Tramways Co., Ltd., and the British Electric Traction Co., being an agreement for the sale of the

undertaking and assets of the Croydon Tramways Co. to the British Electric Traction Co." In an accompanying circular it was stated "the directors and the secretary have agreed to retire on being paid a lump sum as compensation for their loss of office."

The Croydon Company was governed by the Companies Clauses Act, 1845, of which Sect. 71 requires that "every notice of an extraordinary meeting, or of an ordinary meeting, if any other business than the business hereby, or by the special Act appointed for ordinary meetings, is to be done thereat, *shall specify the purpose for which the meeting is called.*"

An injunction was granted to restrain the company from entering into the agreement, as the notice and circular did not sufficiently inform the shareholders.

Now what would anyone understand by that notice—anybody who was not behind the scenes and did not know anything at all about the matter? He would understand from it that the meeting was convened for the purpose of considering a certain agreement for the sale of the undertaking and assets of the company, and would assume as a matter of course that whatever the purchasing company was going to pay for the undertaking would be paid to the vendors—that is, would be paid to the selling company; but that was not true, because a very considerable portion of it was payable to the officers of the selling company. . . . This notice has been most artfully framed to mislead the shareholders. (Per Lindley, M.R., *ib.*)

In *Choppington Collieries, Ltd. v. Johnson*, 1944, 1 All E.R. 762, the facts were that notice of the annual general meeting of the company stated that the purpose of the meeting was, *inter alia*, to elect directors," and that "In accordance with the articles of association, Mr. — retires and, being eligible offers himself for re-election." At the meeting Mr. — was proposed for re-election as a director, but an amendment was moved that three other persons be elected directors. This would not have meant an increase beyond the number allowed. The chairman ruled the latter out of order and also rejected a substantive motion that the three persons in question be elected directors. Did the form of the notice confine the election to one director? It was held that the notice sufficiently specified within the meaning of the appropriate articles the general nature of the business, so to bring it within the competence of the meeting to elect directors up to the number permitted by the articles.

But where all the shareholders are present, or a majority in number holding 95 per cent of the shares, they may agree to waive any informality of notice. (*In re Oxted Motor Co.*, 1921, 3 K.B. 32; *re Express Engineering Works*, 1920, 1 Ch. 466.) And a company is bound in a matter *intra vires* by the agreement of all its members. And the principle of the two cases just cited is expressly recognized by Sect. 141 (2) of the Act in the case of a meeting held to pass a special resolution. (See p. 47.)

6. The Notice must Specify the Actual Terms of an Extraordinary Resolution, and that it is Proposed to Pass it as an Extraordinary Resolution. (*MacConnell v. Prill & Co.*, 1916, 2 Ch. 57.)

Sect. 141 of the Companies Act, provides that an extraordinary resolution is one passed at a general meeting, "of which notice specifying the intention to propose the resolution as an extraordinary resolution has been duly given."

It will be clear from this that it is not possible to make any material alteration in the wording of an extraordinary resolution as set out in the notice; it is a case of giving notice of the intention to propose the exact motion and no modification of it.

7. The Notice of the Meeting Necessary to Pass a Special Resolution should also Specify its Terms and State that the Resolution will be Proposed as a Special Resolution

Sect. 141 (2) defines a special resolution as one passed "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 given."

Here again no amendment of the terms of the resolution may be accepted. It will be noticed that the only difference between extraordinary and special resolutions is as regards the length of notice; the latter must be passed at a general meeting of which

at least twenty-one days' notice has been given—unless, of course, a majority in number of the members entitled to attend and vote agree to a less time. (See page 50.)

8. Notice must be Absolute and not Conditional unless the Articles so Provide

The shareholders must be definitely informed that a meeting will be held on a certain day. It may sometimes be economical of both time and money to issue, in certain circumstances, one notice convening two meetings. Hence, Articles of Association may provide that two meetings may be convened by one and the same notice.

9. The Notice of a Meeting once given cannot be Withdrawn, unless the Articles so Provide

The procedure in this case is to hold the meeting on the appointed day and then adjourn it to a more convenient date, but in the absence of express authority directors cannot postpone a general meeting properly convened. (*Smith v. Paringa Mines*, 1906, 2 Ch. 193.) But a meeting not properly convened, e.g. because due notice has not been given, can be cancelled and a fresh meeting convened.

10. Notice of an Adjourned Meeting is not necessary unless the Articles so Provide

I hold it to be quite clear that upon general principles an adjournment, if *bonâ fide*, is only a continuation of the meeting : the moment you admit identity of meeting no more is to be said, and the notice that was given for the first meeting holds good for and includes all the other meetings following upon it. (*Kerr v. Wilkie*, 1860, 1 L.T. 501.)

Clause 57 of Table A provides—

The chairman may, with the consent of any meeting at which a quorum is present (and shall if so directed by the meeting), adjourn the meeting from time to time and from place to place, but no business shall be transacted at any adjourned meeting other than the business left unfinished at

the meeting from which the adjournment took place. When a meeting is adjourned for thirty days or more, notice of the adjourned meeting shall be given as in the case of an original meeting. Save as aforesaid it shall not be necessary to give any notice of an adjournment or of the business to be transacted at an adjourned meeting.

When the meeting is adjourned *sine die* (without fixing a date), notice must be given of the day ultimately fixed for the holding of the adjourned meeting.

Only the business not transacted at the original meeting can be transacted at the adjournment, but if the directors desire to take advantage of the presence of the members to transact other business, a notice convening an extraordinary meeting to be held after the adjourned meeting must be issued, in the following form—

NOTICE IS HEREBY GIVEN that an Extraordinary General Meeting of the Members of the above Company will be held, etc., at o'clock in the noon or so soon thereafter as the business of the Adjourned Meeting called for o'clock is concluded.

In the case of the statutory meeting of a registered company, if it is adjourned, fresh business may be dealt with at such adjourned meeting. Sect. 130 (8) provides—

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.

11. Notice must Mention Proxies

In every notice calling a meeting of a company having a share capital there must 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. (Sect. 136 (2).)

New Forms of Notice

Section 142 contains a new form of notice termed "special notice" given to the company in the case of certain resolutions which a member may wish to move. The proposed removal of a director (Sect. 184) or the appointment of another auditor in place of the retiring auditor (Sect. 160), are instances of resolutions requiring "special notice" which must be not less than 28 days before the meeting. The directors must then include the resolutions in the notice sent out to the shareholders.

Shareholders' Resolutions

Shareholders can send in resolutions which they require to be considered at the next annual general meeting provided that the requisitionists, as the shareholders are described in this connection, number at least one hundred holding between them at least £10,000 of the issued share capital, that is to say, holding shares "on which there has been paid up an average sum, per member, of not less than £100." Alternatively, any number of members holding one-twentieth of the voting rights and entitled to vote can send in resolutions.

The requisitionists can also send in an accompanying statement up to 1000 words which directors must also circulate. This right to send in statements applies to any general meeting and not, as in the case of resolutions only, to the annual general meeting.

Section 140 (4)-(7) states—

(4) A company shall not be bound under this section to give notice of any resolution or to circulate any statement unless—

(a) a copy of the requisition signed by the requisitionists (or two or more copies which between them contain the signatures of all the requisitionists) is deposited at the registered office of the company—

(i) in the case of a requisition requiring notice of a resolution, not less than six weeks before the meeting; and

(ii) in the case of any other requisition, not less than one week before the meeting; and

(b) there is deposited or tendered with the requisition a sum reasonably sufficient to meet the company's expenses in giving effect thereto:

Provided that if, after a copy of a requisition requiring notice of a resolution has been deposited at the registered office of the company, an annual general meeting is called for a date six weeks or less after the copy has been deposited, the copy though not deposited within the time required by this subsection shall be deemed to have been properly deposited for the purposes thereof.

(5) The company shall also not be bound under this section to circulate any statement if, on the application either of the company or of any other person who claims to be aggrieved, the court is satisfied that the rights conferred by this section are being abused to secure needless publicity for defamatory matter; and the court may order the company's costs on an application under this section to be paid in whole or in part by the requisitionists, notwithstanding that they are not parties to the application.

(6) Notwithstanding anything in the company's articles, the business which may be dealt with at an annual general meeting shall include any resolution of which notice is given in accordance with this section, and for the purposes of this subsection notice shall be deemed to have been so given notwithstanding the accidental omission, in giving it, of one or more members.

(7) In the event of any default in complying with the provisions of this section, every officer of the company who is in default shall be liable to a fine not exceeding five hundred pounds.

Defamatory Statements

By subsections (4) and (5) not only must a deposit be sent to cover the expenses of issuing the resolutions, etc. (returnable if the meeting so decides), but the legal costs of any application to the Court on the ground that a statement is defamatory may be incurred by the requisitionists.

In the case of the removal of a director or the appointment of a new auditor both the director and the retiring auditor are entitled to reply, a copy of such reply being sent out to the shareholders before the meeting. These rejoinders will also be read out at the meeting but only if the directors are satisfied that they do not contain defamatory statements.

CHAPTER VI

QUORUM AT GENERAL MEETING

To constitute the meeting, there must be present the minimum number of members as prescribed by the regulations of the company.

Clause 53 of Table A provides—

No business shall be transacted at any general meeting unless a quorum of members is present at the time when the meeting proceeds to business; save as herein otherwise provided, three members present in person shall be a quorum.

Unless the regulations otherwise provide, e.g. "at any general meeting three members present in person or by proxy shall constitute a quorum," the quorum must consist of members present in person.

But where the articles provided that the quorum should be two members personally present, and one member and also one representative of a corporate shareholder were present, it was held that there was a valid quorum. (*In re Kelantan Coco Nut Estates, Ltd.*, 1920, W.N. 274.) The Court or the Board of Trade may direct that one person present in person or by proxy may constitute a meeting (Sects. 131 and 135).

In the case of meetings of statutory companies, Sect. 72 of the Companies (Clauses) Act, 1845, allows persons present by proxy to count in the quorum—

Sect. 72. In order to constitute a meeting (whether ordinary or extraordinary) there shall be present, either personally or by proxy, the prescribed quorum; and if no quorum be prescribed [i.e. by the special Act], then shareholders holding in the aggregate not less than one-twentieth of the capital of the company, and being in number not less than one for every five hundred pounds of such required proportion of capital, unless such number would be more than twenty, in which case twenty shareholders, holding not less than one-twentieth of the capital of the company, shall be the quorum: and if within one hour from the time appointed

for such meeting the said quorum be not present, no business shall be transacted at the meeting other than the declaring of a dividend, in case that shall be one of the objects of the meeting : but such meeting shall, except in the case of a meeting for the election of directors, hereinafter mentioned, be held to be adjourned *sine die*.

No meeting of a statutory company can be held if the issued capital is less than the "one-twentieth" specified in Sect. 72. (*Re Skegness Tramways*, 1888, 41 Ch.D. 225.)

No business can be done unless a quorum is present. (*Howbeach Coal Co. v. Teague*, 1860, 5 H. & N., 151.)

In the case of registered companies, if the regulations are silent as to the quorum, Sect. 134 (c) of the Companies Act, 1948, provides that "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."

Usually the regulations provide that in the absence of a quorum the meeting shall stand adjourned.

Thus, Clause 54 of Table A provides—

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.

For the regulations of statutory companies on this matter, see Sect. 72 of the Companies Clauses Act, 1845.

The quorum must consist of persons qualified to vote. (*Henderson v. Louttit & Co.*, 1894, 21 Rettie 674. *Yuill v. Greymouth-Point Elizabeth Railway & Coal Co.*, 1904, 1 Ch. 32.)

"The two directors were not capable of voting on the question, and therefore there was no quorum and no valid contract for the issue of debentures to the two directors." (Per Farwell, J., in latter case.)

Although the latter case dealt with the disqualification of directors at a board meeting, it might be held that the same principle applies to shareholders at a general meeting.

One person present, but representing other shareholders by proxy, cannot constitute a quorum unless the Court or the Board of Trade has otherwise decided (see p. 55).

In re Sanitary Carbon Co. (1877, W.N. 223), a meeting was held to pass a resolution to wind up voluntarily. Worswick, a shareholder, was the only member present, but he held proxies from the other three shareholders.

Sharp v. Dawes was conclusive on the subject. In that case, as in this, one shareholder held a meeting, and the only point of difference between the two cases was that there the shareholder passed a vote of thanks to himself. (Per Sir George Jessel, M.R.)

The proceedings were held to be invalid, as there was no meeting.

The facts in *Sharp v. Dawes* (1876, 2 Q.B.D. 26) were as follows: A meeting of a company was held to sanction a call. There were several shareholders, but only one attended, in addition to Sharp, the secretary. The shareholder held all the proxies of the other shareholders, took the chair, passed a resolution making the call, and concluded with a vote of thanks to himself.

Action was brought by the company, in the name of the secretary, against the defendant, a shareholder, to enforce the call. It was held that the call was invalid, not having been made at a meeting of the company.

An exception to the rule that "one person cannot constitute a meeting" was established in *East v. Bennett Brothers, Ltd.* (1911, 1 Ch. 163) where a meeting of one class of shareholders was held and the whole of the issued shares of that class was held by one shareholder. It was decided that the meeting in these

special circumstances could be constituted by one shareholder.

Where one person only is the holder of all the shares of a particular class, and as that person cannot meet himself, or form a meeting with himself, in the ordinary sense, the persons who framed the memorandum, having such a position in contemplation, must be taken to have used the word "meeting" not in the strict sense, but as including the case of a single shareholder. (Per Warrington, J.)

The quorum must be present throughout the meeting. (*Henderson v. Louttit & Co.*, 1894, 21 Rettie 674.)

Quorum Competent to Vote

It has not been definitely decided by any English Court whether a quorum at a general meeting must consist of persons competent to vote, but opinion is that it should.

Clause 53 of Table A provides—

No business shall be transacted at any general meeting unless a quorum of members is present at the time when the meeting proceeds to business . . .

In computing a quorum, proxies and members not entitled to vote are not usually counted, though particular articles of association may provide otherwise; and even where there has been a quorum at a meeting, the meeting cannot transact any business after the members present have ceased to be sufficient to constitute a quorum. (*Henderson v. Louttit & Co.* (*supra*) and *Yuill v. Greymouth-Point Elizabeth, Etc., Co.*, 1904, 1 Ch. 32.)

NOTE ON TWO-WAY PROXIES. These are proxy forms so worded that shareholders to whom they are sent may vote either for or against the resolution in question. Clause 70 of Table A contains a precedent form (see page 95).

CHAPTER VII

THE CHAIRMAN OF THE GENERAL MEETING

THE regulations of the company will usually deal with the appointment of the chairman. Thus, Clause 55 of Table A provides—

The chairman, if any, of the board of directors shall preside as chairman at every general meeting of the company, or if there is no such chairman, or if he shall not be present within fifteen minutes after the time appointed for the holding of the meeting or is unwilling to act the directors present shall elect one of their number to be chairman of the meeting.

Clause 56 provides—

If at any meeting no director is willing to act as chairman or if no director is present within fifteen minutes after the time appointed for holding the meeting, the members present shall choose one of their number to be chairman of the meeting.

And Sect. 134 (*d*) provides that, “in so far as the articles of the company do not make other provision,” any member elected by the members present at the meeting may be chairman.

If for any reason it is impracticable to call a meeting in the usual way (e.g. if there are no directors, or for some reason they cannot act), or to conduct the meeting, the Court may “order a meeting of the company to be called, held, and conducted in such manner as the Court thinks fit.” (Sect. 135.)

The application to the Court can be made by a director or any member entitled to vote (*ib.*).

Chairman of Statutory Company

Sect. 73 of the Companies (Clauses) Act, 1845, provides—

At every meeting of the company one or other of the following persons shall preside as chairman: that is to say the chairman of the directors, or in his absence, the deputy

chairman, if any, or in the absence of the chairman and deputy-chairman, some one of the directors of the company to be chosen for that purpose by the meeting; or in the absence of the chairman and the deputy-chairman and of all the directors, any shareholder to be chosen for that purpose by a majority of the shareholders present at such meeting.

Authority of Chairman

The chairman derives his authority from the meeting, as Lord Chief Justice Jervis put it in *Taylor v. Nesfield*:¹ "Public meetings must be regulated somehow, and where a number of persons assemble and put a man in the chair, they devolve upon him by agreement the conduct of that body. They attorn to him, as it were, and give him the whole power of regulating themselves individually. This is within reasonable bounds. *The chairman collects, as it were, his authority from the meeting.*"

It follows from the latter passage that the Chairman must preserve order, take care that the proceedings are conducted in a proper manner, and that the sense of the meeting is properly ascertained with regard to any question which is properly before the meeting.

It is on him that it devolves, both to preserve order in the meeting, and to regulate the proceedings so as to give all persons entitled a reasonable opportunity of voting. He is to do the acts necessary for these purposes on his own responsibility, and subject to the being called upon to answer for his conduct if he has done anything improperly. (Per Denman, L.C.J., *Reg. v. D'Oyly & Others*, 1840, 12 A. & E. 139.)

Duties

The duties of the chairman are, therefore—

- (1) To keep order.
- (2) To conduct the meeting so that the sense of the meeting is ascertained.
- (3) To decide questions of procedure requiring decision.
- (4) To act impartially in the general interests of those present at the meeting.

¹ *Wills on Vestries*, 29, footnote.

Hence (a) he cannot conclude or adjourn a meeting because the course of action favoured by the meeting does not commend itself to him. *Per contra* (b) it is the duty of the meeting to support the ruling of the chairman.

In support of (a), reference may be made to *National Dwellings Society v. Sykes* (1894, 3 Ch. 159), where Chitty, J., observed—

The power which has been contended for is not within the scope of the authority of the chairman, viz., to stop the meeting at his own will and pleasure. The meeting is called for the particular purposes of the company. According to the constitution of the company, a certain officer has to preside. He presides with reference to the business which is there to be transacted. In my opinion, he cannot say, after that has been opened: "I will have no more to do with it; I will not let this meeting proceed; I will stop it; I declare the meeting dissolved; and I leave the chair." In my opinion that is not within his power.

In support of (b), "the details of the proceedings must be regulated by the persons present and by the chairman, and if his decision is quarrelled with, by the majority of those present." (*Wandsworth Gas Light Co. v. Wright*, 1870, 22 L.T. 405.)

Powers of the Chairman

In order that he may properly perform his duties, the chairman is invested by the regulations or by law with certain powers.

KEEPING ORDER. The chairman will be called upon in the general interests of the meeting to decide who shall first address the meeting when two or more rise simultaneously. According to Sir Reginald Paglgrave "Several persons, perhaps, may rise simultaneously to address the meeting, and a general impression may ensue that preference should be shown to one amongst them who has not received the chairman's call. Although, by long-established usage, the House of Commons systematically defers to the Speaker's

decision in this matter, still the power of determining who it is that shall be heard can be exerted by the House. In accordance, therefore, with Parliamentary usage, such a difference of opinion between a meeting and their chairman may be met by a motion 'that Mr. Z. be now heard,' and, if duly seconded, the motion must be submitted by the chairman to the vote. This proceeding is, however, inexpedient, as deference to the chair is a principle which should, if possible, be invariably observed."

Such a motion must be put at once by the chairman and decided by a vote of hands. No voting by proxy at a poll would be allowed, as obviously the question must be decided forthwith.

A speaker, having been called upon, is entitled to speak without interruption so long as his speech is pertinent and relevant to the question before the meeting. If not, any member may rise to a point of order.¹ The speaker must then resume his seat, whilst the chairman decides the point of order. It should be noted that a member rising to a point of order must act promptly, and the chairman, who has authority to decide all emergent questions which necessarily require decision at the time, must give his decision at once.

If the member is of opinion that the chairman's ruling is wrong, he must acquiesce, reserving his right to take legal proceedings.

In *Henderson v. Bank of Australasia* (1890, 45 Ch.D. 330) this question was considered, viz., whether the member ought to protest at once against the ruling of the chairman, and if he does not so protest, whether his right to object to the ruling is lost.

Fry, L.J., observed—

I distinctly hold that it is not the necessary course of

¹ POINT OF ORDER. A question regarding the procedure at a meeting, raised by a member during discussion. It must be settled by the chairman at once.

conduct for shareholders to challenge the ruling of the chairman. . . . It is said that Mr. Henderson acquiesced. I do not think so, and he certainly did not lose his rights by acting in conformity with the chairman's ruling.

Lopes, L.J., observed—

He (Mr. Henderson) resisted as far as he decently could. He was not bound to challenge the ruling. When a chairman rules that an amendment cannot be put, it would be wrong for the shareholder to proceed to discuss the ruling.

APPLYING THE CLOSURE. It frequently becomes necessary after "free and fair discussion" to apply the closure, in other words to declare the discussion at an end.

It certainly was of importance that free and fair discussion in meetings of shareholders should be supported by the courts. In his lordship's opinion, however, it had never been held that any particular shareholder had a right to insist upon being heard at any time and at any length that he pleased. That was a matter which must be left to the control of the chairman supported by the meeting itself. (Stirling, J., in *Wall v. London & Northern Assets Corporation*, 1898, 2 Ch. 469.)

But in applying this summary remedy the chairman must regard the rights of the minority, who must have a fair opportunity of placing their case before the shareholders.

The following observations by the Court may be added.

As to the closure, I think that if we laid down that the chairman, supported by a majority, could not put a termination to the speeches of those who were desirous of addressing the meeting, we should allow a small minority, or even a member or two, to tyrannize over the majority. The case has been put by counsel as the terrorism of the majority. If we accepted his proposition, we should put this weapon into the hands of the minority, which might involve the company in all-night sittings. . . . In this particular case there seems to have been nothing arbitrary or vexatious on the part of the chairman or of the majority. (Per Chitty, L.J.)

And again—

It appears there was a discussion about this matter at a meeting of the shareholders of the Assets Company, and after having heard the views—I do not say of all those who approved, but of one or two of them—the meeting came to the conclusion that they had heard enough, and did not want to hear any more, and thereupon the chairman declared the

discussion closed. That is said to be a matter calling for the interference of this court. I do not think so. I think it would be a very bad precedent that we should interfere in such a case. (Per Master of the Rolls.)

“THAT THE QUESTION BE NOW PUT.” The closure would be preceded by a motion intended to stop further discussion, and therefore not permitting of any further debate. No amendment of the motion can for the same reason be accepted. The question to be put may be either an original motion or an amendment.

Thus, in the first case, the motion being “That the report and accounts be received and adopted,” and the meeting having resolved “That the question be now put,” the original motion is at once put by the chairman. If the motion to apply the closure is not carried, discussion, of course, continues on the original motion. Similarly the discussion will go on if the closure is moved, but not carried, on an amendment to the original motion., e.g. that the report and accounts be received and adopted (except as regards the proposed redemption of debentures by the issue of new capital).

The meeting will discuss the proposed amendment, being the bracketed portion of the foregoing, and after discussion the closure is moved. If carried, the amendment becomes part of the substantive motion which is in due course submitted to the meeting.

“THAT THE QUESTION BE NOT NOW PUT.” This form of motion is termed the “Previous question.” To begin with, the effect, if the motion is carried, is to prevent further discussion of the main question, which is shelved. But, if lost, the effect is the same as the closure, and the main question cannot be further discussed but must be at once put to the meeting.

In *The Parish*, the learned author thus explains the “Previous question” in the unusual form “That the Question be now put” as meaning—

The question shall first, and at once, be put, whether or not the proposed resolution shall be, even now, put to the vote

at all. The person who moves "the previous question," really votes against what would ordinarily seem his own motion; that is, he and his followers vote *against* the previous question—they vote that the resolution shall *not* be now put. If the negative vote is carried—if the "noes" are highest on the "previous question"—the original resolution falls to the ground. But if the "ayes" have it, the original resolution must be at once put.

The meaning of the epithet "Previous," is that it must first of all be decided whether the original motion is to be put to the vote at all. There must be a previous decision.

The following points should be noted—

1. The "Previous question" may be moved by any person who has not spoken on the main question.
2. It requires to be seconded.
3. It cannot be moved if an amendment is being debated (herein differing from the closure).
4. No amendment of the "Previous question" can be accepted.
5. It can be superseded by a motion for the adjournment of the meeting.

ADJOURNMENT. A powerful weapon in the hands of the chairman is the power in certain circumstances to adjourn the meeting. Table A, Clause 57, provides—

The chairman may, with the consent of any meeting at which a quorum is present (and shall if so directed by the meeting), adjourn the meeting from time to time and from place to place, but no business shall be transacted at any adjourned meeting other than the business left unfinished at the meeting from which the adjournment took place. When a meeting is adjourned for thirty days or more, notice of the adjourned meeting shall be given as in the case of an original meeting. Save as aforesaid it shall not be necessary to give any notice of an adjournment or of the business to be transacted at an adjourned meeting.

As regards the statutory meeting (*ante* p. 36), the power of adjournment rests entirely with the meeting, and the chairman has no power of veto.

Where the Articles follow the provision in Clause 57 of Table A, the chairman can exercise his discretion,

and is not bound to adjourn the meeting, even though a majority of those present desire it. (*Salisbury Gold Mining Co. v. Hathorn*, 1897, A.C. 268.)

The adjournment is to be his act, not that of the meeting or of those present at it. The article provides for the consent of the members which implies that the act is not theirs but his. (Per Lord Herschell, *ib.*)

It may be added that an adjournment is the usual remedy where a meeting is disorderly, and gets beyond control. The adjournment may be to a later hour or to another day, as the circumstances may require.

In *Catesby v. Burnett* (1916, 2 Ch. 325), a general meeting at which two directors retired by rotation was adjourned, no directors being elected but a committee being appointed to report at the adjourned meeting. Notice was given one month before that date by a shareholder that he proposed to move the election of four named persons as directors. The committee's report was received and discussed, and the chairman ruled out of order the notice to appoint directors. He then declared the business closed and left the chair. The shareholders voted Catesby into the chair and the directors were appointed.

It was held that if a chairman adjourns a meeting without completing the business for which it is convened, the remaining members have the right to elect another chairman and finish the business thus uncompleted. Likewise, if a chairman vacates the chair; the appointment of another chairman by the meeting enables the meeting to continue, unless there are rules or standing orders to the contrary.

Adjournment of Meetings of Statutory Companies

Sect. 74 of the Companies Clauses Act, 1845, provides :

The shareholders present at any such meeting shall proceed in the execution of the powers of the company with respect to the matters for which such meeting shall have been convened, and those only, and every such meeting may be

adjourned from time to time and from place to place; and no business shall be transacted at any adjourned meeting other than the business left unfinished at the meeting from which such adjournment took place.

It follows that the power of adjournment rests with the proprietors at a meeting of a statutory company.

Ascertaining Sense of Meeting

The second of the duties of the chairman is "to conduct the meeting so that the sense of the meeting is ascertained."

As is clearly shown by the passage cited above from *National Dwellings Society v. Sykes* (*ante* p. 61), the chairman cannot stop the meeting at his own will and pleasure. But after a fair and reasonable discussion, he can with the approval of the meeting declare the discussion at an end and put the motion under debate to the general vote. No particular shareholder has a right to insist upon being heard at any time, and at any length he pleases. Such questions are left to the control of the chairman, supported by the meeting. But the minority must always be allowed a fair opportunity of placing their case before the shareholders, and any oppressive or undue interference with this right of a minority will be prevented by the Court. (*Wall v. London and Northern Assets Corporation*, 1898, 2 Ch. 469.)

Accordingly, in applying the closure, Lord Justice Chitty observed in the case just cited—

As to the closure, I think that if we laid it down that the chairman, supported by a majority, could not put a termination to the speeches of those who were desirous of addressing the meeting, we should allow a small minority, or even a member or two, to tyrannize over the majority.

In order that there may be fair and reasonable discussion, and the sense of the meeting be ascertained, the chairman has power to decide who of several contending speakers shall first address the meeting, to see that the speaker addresses himself to the motion

or amendment before the meeting, to decide whether a proposed motion or amendment is in order, to put the question to the vote, to grant a poll, to adjourn the meeting, and to see that the minutes properly record the proceedings.

Inasmuch as the chairman who presides at such meetings, and has to receive the poll and declare its result, has *prima facie* authority to decide all emergent questions which necessarily require decision at the time, his decision of these questions will naturally govern, and properly govern, the entry of the minutes in the books; and though in no sense conclusive, it throws the burden of proof upon the other side, who may say, contrary to the entry in the minutes following the decision of the chairman, that the result of the poll was different from that recorded. (*Indian Zoedone Co.*, 1884, 26 Ch.D. 70.)

Questions of Procedure

The third of the functions of the chairman, viz., to decide questions of procedure, follows as a corollary from the first, and is dealt with later in connection with voting, resolutions, and amendments at meetings. Here it is sufficient to point out that all business transacted must be fairly covered by the notice given, and that notice may be specifically required of certain business to be transacted in a certain way, e.g. by an extraordinary or a special resolution. Shareholders' resolutions requisitioned under Sect. 140 of the Companies Act, 1948 (*ante* p. 53) are within this category.

Chairman must Act Impartially and in Good Faith

But, above all, he must fulfil the fourth of his functions, and act impartially and in good faith. In that case, even if his decisions may be wrong, he would not incur liability.

CHAPTER VIII

PROCEDURE AT GENERAL MEETING

THE business of a meeting should as a rule be transacted in the order in which it is stated on the agenda. General meetings usually begin by the secretary reading the notice convening the meeting, and the auditors' report upon the directors' accounts examined by them. If the auditor is present (and he has now a statutory right to attend general meetings) he will usually read the report himself.

The Auditors' Report

Sect. 162 of the 1948 Act provides—

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.

Assuming that the first item on the agenda (after reading the notice and the auditor's report) is to move the adoption of the report and accounts, the chairman will formally move—

That the report and accounts be adopted.

Reading the Minutes

Sect. 145 of the Companies Act, 1948, provides—

(1) Every company shall cause minutes of all proceedings of general meetings . . . 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.

After the notice convening the meeting and the auditor's report have been read, the business of the general meeting may open with the reading of the minutes of the last general meeting. But, commonly, the minutes are not read where they have already been circulated, or where the record has already been signed by the chairman at the next ensuing *directors'* meeting.

Generally speaking, at the next meeting of any company the minutes of the last meeting are read and signed by the chairman of the next meeting. But it is not necessary that they should be signed by the chairman of that meeting. If they are signed by the chairman of the meeting [whose proceedings are recorded] they are conclusive against all persons present at that meeting, that is to say, they are conclusive unless the burden of proof, which is thrown on those who are attempting to disprove them, should satisfy the court that something took place other than is there stated. (Per Romilly, M.R., *ex parte Stock*, 1864, 33 L.J. Ch. 731.)

In the absence of special provision in the regulations of the company, therefore, the minutes need not be left for reading and signature until the next general meeting.

Minutes are *prima facie* evidence, and consequently may be rebutted,¹ and Sect. 145 (3) of the 1948 Act, provides—

Where minutes have been made in accordance with the provisions of this section of the proceedings at any general meeting of the company . . . then, until the contrary is proved, the meeting shall be deemed to have been duly held and convened, and all proceedings had thereat to have been duly had, and all appointments of directors, managers or liquidators shall be deemed to be valid.

¹ In *Fireproof Doors, Ltd.* (1916, 2 Ch. 143), oral evidence was admitted to prove that a resolution had not been entered.

STATUTORY COMPANIES. Sect. 98 of the Companies Clauses Act, 1845, provides—

The directors shall cause notes, minutes or copies, as the case may require. . . . of the orders and proceedings of all meetings of the company . . . to be duly entered in books, to be from time to time provided for the purpose which shall be kept under the superintendence of the directors, and every such entry shall be signed by the chairman of *such* meeting . . .

In *Southampton Dock Co. v. Richards* (1840, 1 M. & G. 448), it was held to be sufficient if the same chairman signed the minutes at a subsequent meeting.

Passing of Minutes

The chairman signs the minutes if correctly recorded, and the usual entry will run, "The minutes of the last general meeting, held on —, were read and signed as a correct record."

The phrase sometimes used, "read and confirmed," is objectionable, as no confirmation of proceedings had or resolutions passed at the previous meeting is required. What is necessary is that the minutes should correctly record those proceedings and resolutions, and the object of signing the minutes is to make certain that a correct record has been made.

As previously mentioned, the minutes of shareholders' meetings are usually approved at the directors' meeting next following, but shareholders have the right to call for the minutes of their previous meeting to be read to the meeting then in progress.

Loose-Leaf Minute Books

In *Hearts of Oak Assurance Co. v. Flower*, 1936, 1 Ch. 76, the judge refused to receive in evidence a loose leaf Minute Book in which the leaves were held together by a binder. There has been no other reported case on the point, but the point is now covered by Sect. 436 of the Companies Act, 1948, which reads—

436. (1) Any register, index, minute book or book of

account required by this Act to be kept by a company may be kept either by making entries in bound books or by recording the matters in question in any other manner.

(2) Where any such register, index, minute book or book of account is not kept by making entries in a bound book, but by some other means, adequate precautions shall be taken for guarding against falsification and facilitating its discovery, and where default is made in complying with this subsection, the company and every officer of the company who is in default shall be liable to a fine not exceeding fifty pounds and further shall be liable to a default fine.

Motions

The business of company meetings is transacted by means of resolutions, which are motions passed by the members present. Strictly speaking, motions are proposals which are brought forward at a meeting ; they are debated and may be amended ; and the resultant propositions, when passed, are resolutions. But the words *motion* and *resolution* are often used to mean the same thing, i.e. a proposal submitted for the approval of a meeting.

Resolutions form the subject of the next chapter.

A *substantive motion* is an independent motion, i.e. an original motion embodying any amendments agreed to, put to a meeting for discussion and, if need be, amendment.

Amendments

(1) An amendment may be proposed to omit from, or to insert in, the original proposal, certain words, or simply to add certain words.

(2) It should not be in negative form (an exception is to be found in the " Previous question," *ante* p. 64). Obviously, an amendment, " That the report and accounts be not adopted " can be decided by a vote on the original motion.

(3) It should be in writing, but the chairman can accept an oral amendment.

(4) It must be relevant to the main question.

(5) It must be within the scope of the notice of the meeting.

(6) It need not be seconded.

In my opinion if the chairman put the question without its being either proposed or seconded by anybody, that would be perfectly good. (Per James, L.J., in *re Horbury Bridge Co.*, 1879, 11 Ch.D. 109.)

As an amendment to the motion, "That the report and accounts be received and adopted," a member can move—

(1) That the report and accounts be received but not adopted.

(2) That the report and accounts be received and adopted, except (here certain matter may be excepted), or provided that (here special directions might be given to the board).

Sect. 137 of the 1929 Act, enabling shareholders to appoint inspectors is repealed by the Companies Act, 1948, which authorizes the Board of Trade to appoint inspectors. (Sect. 164 *et seq.*)

Dilatory Motions

Motions may be moved, not to omit certain words or to insert words, or to leave out words and insert others, or to add certain words, but for an entirely different reason, viz. to prevent or delay discussion. Thus any of the following dilatory motions may be moved—

(a) That the meeting be now adjourned.

(b) That the debate be now adjourned.

(c) That the meeting proceed to the next business.

(d) The "Previous question."

(e) The closure.

The subject of (a) has already been discussed (*ante* p. 65). The adjournment of the debate prevents the discussion of a particular matter, but the meeting may continue to transact other business.

With regard to (c), as already explained, when an

amendment is under discussion, it is not permissible to move the "Previous question," but in such circumstances it is in order to move "That the meeting proceed to the next business."

Again, the effect of the passing of this motion is that the amendment under discussion is dropped, and the original question continues to be debated.

As regards (*d*), see p. 64, and as to (*e*), see p. 63.

Rules for Motions and Amendments

The rules for motions and amendments thereto may be stated as follows—

(*a*) **WITHIN THE SCOPE OF THE NOTICE.** No amendment can be moved which is outside the scope of the notice convening the meeting. Suppose, for example, the meeting is called for the purpose of increasing the capital to £50,000. It would be competent for the meeting to pass a resolution that the capital be increased to a smaller amount, but not to a larger amount. On the other hand, if the business is simply to increase the capital, without specifying any particular limit, the meeting could resolve to increase the capital to any amount.

(*b*) **RELEVANT TO THE ORIGINAL MOTION.** Thus a meeting convened to pass resolutions for winding up with a view to reconstructing the company, could not abandon the reconstruction and pass a resolution for winding up. (*Re Teede & Bishop, Ltd.*, 1901, 17 T.L.R., 282.)

Obviously many shareholders might abstain from attending a meeting convened with the definite object of reconstructing the company, especially as they might be already conversant with and in favour of the scheme of reconstruction.

(*c*) **MUST NOT BE IN NEGATIVE FORM.** As already stated, an amendment, "That the report and accounts be not received or adopted," moved to the original question, "That the report and accounts be received

and adopted," is out of order. Shareholders not in favour of the question can speak against it and vote against it, so that it is unnecessary to move any amendment which is a mere negative.

(d) NEED NOT BE IN WRITING. Unless the regulations so require, the chairman cannot refuse to submit a motion or amendment merely because its terms are not submitted to him in writing. As the Court put it in *Henderson v. Bank of Australasia* (1890, 45 Ch.D. 330), "it was not incumbent on the plaintiff to formally frame his amendment, as it was evident that the chairman and the meeting quite understood it."

In this important case, the serious consequences resulting from the chairman improperly refusing to submit an amendment were made clear.

I think Mr. Henderson really did propose his amendment, and that the chairman understood it, but refused to put it, on the advice of the company's solicitor, that no amendment could be proposed, but that the resolution must be accepted or rejected as it stood. Mr. Henderson wished chiefly to propose an amendment as to the holding of the directors' qualification, that he objected to the proviso as to the shareholders' six months qualification for voting, and, although his language was not as clear as a pleading in a court of law, still it was reasonably clear. The chairman said that an amendment relating to the qualification of directors was beyond the scope of the meeting, and there, in my opinion, he was right. But he did not say that as to the latter part of Mr. Henderson's amendment; on the contrary, he asked if anyone seconded the amendment. He could not be asking for a seconder to an amendment he had already ruled could not be put. He understood what the amendment was . . .

The result of not putting the amendment was that the resolution, as passed, was invalidated.

(e) NEED NOT BE SECONDED. Unless the regulations expressly so provide, the chairman can, in his discretion, submit a motion or an amendment which has not been seconded.

Is there any law of the land that at a meeting of shareholders a motion cannot be put unless it is seconded? I am not aware of any. In my opinion, if the chairman put the question

without its having been either proposed or seconded by anybody, that would be perfectly good. (Per James, L.J., in *re Horbury Bridge Co.*, 1879, 11 Ch.D. 109.)

But in ordinary circumstances, the chairman would await the seconding of a motion or amendment in order not to waste the time of the meeting by asking them to consider a proposal which is supported only by one person. Still, the law is clear, viz. that if he does submit the motion, etc., without a seconder, and it is carried, no objection can subsequently be taken to the fact that it was not seconded.

(f) NOTICE MAY BE REQUIRED BY THE REGULATIONS. The regulations commonly provide that notice must be given to the company of any proposed amendment to business about to be transacted at a general meeting.

Submitting Amendments

The chairman must necessarily submit an amendment to the vote before the main question can be submitted to the meeting. If carried, the original motion as amended is submitted.

Thus—

Motion. That the report and accounts be received and adopted.

Amendment. That the report and accounts be adopted, except that the proposal to form a subsidiary company to acquire, etc., be not adopted.

The meeting would then discuss the amendment concurrently with the main question. The chairman would then submit the amendment to a vote by show of hands. If lost, a poll might be demanded, which would be taken after the conclusion of the rest of the business. The poll being taken, the result would be declared. If carried on a show of hands, no poll being demanded, the main question as amended would be submitted as a substantive resolution in the ordinary way. It is necessary that the original motion, whether

amended or not, should be put to the meeting as some may wish to record their vote against it ; if, for example, they do not wish to pass the report and accounts, and the proposal not to form a subsidiary company is to them immaterial.

Rules for Debate

An amendment cannot be moved by any person who has proposed or spoken on the original motion. But such person can, of course, speak when the amendment is before the meeting. On the other hand, A can speak not only on his own amendment, but on any subsequent amendment moved by B. A would not be allowed to move a second amendment to the original question. Nor would B be permitted to move any further amendment. It is always competent for the mover to withdraw his motion at any time before the chairman has submitted it to the vote, but the consent of the meeting to the withdrawal is necessary. An amendment to an amendment (though undesirable) may be moved and must be dealt with before the first amendment, the latter being treated as a main question.

Right of Reply

(1) The mover of an original motion introduces it and at the conclusion of debate has a right to reply. To this rule there are, however, certain exceptions. If a person desires to terminate discussion on a question under debate he can, as we have seen, move the adjournment of the meeting or of the debate, or that the vote be taken, the previous question, or the closure. No amendment can be moved to any of these motions, and they give no right of reply.

(2) The mover of an amendment has no right of reply.

(3) The right should be claimed, when an amendment has been proposed and seconded, as soon as the discussion on the amendment has ended.

CHAPTER IX

RESOLUTIONS

A MOTION duly passed at a general meeting is termed a resolution of that meeting.

An *ordinary* resolution is passed by a bare majority of votes at a show of hands or on a poll.

An *extraordinary* resolution is defined in Sect. 141 (1) of the 1948 Act, as follows—

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.

A *special* resolution is defined in Sect. 141 (2) as follows—

141. (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.

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 in the circumstances set out in Chapter V.

The following subsections of Sect. 141 apply to extraordinary and special resolutions—

(3) At any meeting at which an extraordinary resolution or a special resolution is submitted to be passed, a declaration of the chairman that the resolution is carried shall, unless a poll is demanded, be conclusive evidence of the fact without proof of the number or proportion of the votes recorded in favour of or against the resolution.

(4) In computing the majority on a poll demanded on the question that an extraordinary resolution or a special resolution

be passed, reference shall be had to the number of votes cast for and against the resolution.

(5) For the purposes of this section, notice of a meeting shall be deemed to be duly given and the meeting to be duly held when the notice is given and the meeting held in manner provided by this Act or the articles.

The rules with regard to registration and copies of resolutions and agreements are contained in Sect. 143, which is as follows—

143. (1) A printed copy of every resolution or agreement to which this section applies shall, within fifteen days after the passing or making thereof, be forwarded to the registrar of companies and recorded by him:

Provided that an exempt private company need not forward a printed copy of any such resolution or agreement if instead it forwards to the registrar of companies a copy in some other form approved by him.

(2) Where articles have been registered, a copy of every such resolution or agreement for the time being in force shall be embodied in or annexed to every copy of the articles issued after the passing of the resolution or the making of the agreement.

(3) Where articles have not been registered, a printed copy of every such resolution or agreement shall be forwarded to any member at his request on payment of one shilling or such less sum as the company may direct.

(4) This section shall apply to—

(a) special resolutions;

(b) extraordinary resolutions;

(c) resolutions which have been agreed to by all the members of a company, but which, if not so agreed to, would not have been effective for their purpose unless, as the case may be, they had been passed as special resolutions or as extraordinary resolutions;

(d) resolutions or agreements which have been agreed to by all the members of some class of shareholders but which, if not so agreed to, would not have been effective for their purpose unless they had been passed by some particular majority or otherwise in some particular manner, and all resolutions or agreements which effectively bind all the members of any class of shareholders though not agreed to by all those members;

(e) resolutions requiring a company to be wound up voluntarily, passed under paragraph (a) of subsection (1) of section two hundred and seventy-eight of this Act.

(5) If a company fails to comply with subsection (1) of this section, the company and every officer of the company who is in default shall be liable to a default fine of two pounds.

(6) If a company fails to comply with subsection (2) or subsection (3) of this section, the company and every officer of the company who is in default shall be liable to a fine not exceeding one pound for each copy in respect of which default is made.

(7) For the purposes of the last two foregoing subsections, a liquidator of the company shall be deemed to be an officer of the company.

Generally speaking, the business at a general meeting is transacted by ordinary resolution, except where the statute or the regulations otherwise provide. Thus, by extraordinary resolution, a company may be wound up voluntarily (Sect. 278); certain powers are given to the liquidator in a members' voluntary winding up, if sanctioned by extraordinary resolution (Sect. 303); an arrangement between a company about to be, or in course of being, wound up and its creditors is binding on the company if sanctioned by extraordinary resolution (Sect. 306).

A common provision in the regulations is that an increase of capital shall be effected by extraordinary resolution.

By means of a special resolution—

(1) A company can change its name (Sect. 18).

(2) The objects clause can be altered (Sect. 5).

(3) The Articles of Association may be altered (Sect. 10).

(4) A portion of the share capital can be reserved for liquidation purposes (Sect. 60).

(5) A company may pass a special resolution and apply to the Board of Trade to appoint inspectors to investigate its affairs (Sect. 165).

(6) A company can wind up voluntarily (Sect. 278).

(7) The liquidator can be authorized to sell the assets of the liquidating company for shares (Sect. 287).

Ordinary and Special Business

The regulations will define what business is special as, e.g. in Table A, Clause 52—

All business shall be deemed special that is transacted at an

extraordinary general meeting, and also all that is transacted at an annual general meeting, with the exception of declaring a dividend, the consideration of the accounts, balance sheets, and the reports of the directors and auditors, the election of directors in the place of those retiring and the appointment of, and the fixing of the remuneration of, the auditors.

The essential difference between special and ordinary business is that notice of the general nature of the former must be given. If it is proposed at an ordinary general meeting to transact the ordinary business of the annual meeting, passing the reports and accounts, sanctioning a dividend, etc. (*cf.* Clause 52 of Table A *supra*), it would be sufficient for notice to be given that the meeting will be held to transact the ordinary business of the company, without stating the nature of that business. But if any special business is to be transacted at the meeting, notice must be given of the general nature of that business.

In short, notice must be given of all business, whether ordinary or special, but in the case of the latter the notice must indicate generally its nature. Shareholders' resolutions and any accompanying statements under Sect. 140 (*ante* p. 53) and resolutions requiring "special notice" (Sect. 142) may require specific details.

Extraordinary Resolutions

(1) The notice of meetings must specify the intention to propose the resolution as an extraordinary resolution. In *MacConnell v. E. Prill & Co., Ltd.* (1916, 2 Ch. 57), the company's regulations required, *inter alia*, any increase of capital to be effected by an extraordinary resolution. The company issued a notice in this form—

You are kindly requested to attend an extraordinary general meeting to be held at the above address on, etc.

Agenda. To pass resolution to increase capital of the company.

It was held that the notice was bad, because it did not specify the intention to propose the resolution as an extraordinary resolution as required by Sect. 141.

(2) The notice must be "duly given," i.e. in accordance with the requirements of the regulations. Usually the Articles will require fourteen days' notice. But where all the shareholders are present, any informality as to notice can be waived. (*re Oxted Motor Co., Ltd.*, 1921, 3 K.B., 32.)

(3) The resolution requires to be passed by a three-fourths majority of members present who are entitled to vote and who actually vote.

In *re John T. Clark & Co.* (1911, 48 Sc. L.R. 154), an extraordinary resolution to reduce the capital was declared by the chairman to have been carried, but it was obvious that the statutory majority was not obtained.

It was held that the declaration of the chairman was not conclusive evidence of the fact "without proof of the number or proportion of the votes recorded in favour of, or against, the resolution."

The Court can always go behind a ruling which on the face of it is erroneous. As the Court put it in *re Caratal (New) Mines, Ltd.* (1902, 2 Ch. 498)—

It had been held that, if the chairman by his declaration held erroneously or by mistake that a resolution had been carried the court could not go behind that declaration. Two cases established that proposition, viz., *Hadleigh Castle Gold Mines* (1900, 2 Ch.D. 419), and *Arnot v. United African Lands* (1901, 1 Ch. 518). In the latter case there was so much confusion at the meeting that it was impossible for anyone to understand what resolutions were put by the chairman, and the court declined to enter on an investigation as to what numbers voted for and against the resolutions. In the former case the meeting was a stormy one and there was a considerable conflict of evidence as to what took place, and the court refused to entertain the question whether the resolution was carried by the requisite majority. But those decisions did not apply to a case where the chairman by his declaration found the figures and erroneously in point of law held that the resolution had been duly passed. That was what the chairman had done in the present case. He had no right to count the two hundred votes by proxy, and his declaration was not conclusive.

Poll

If a poll is demanded, the voting by show of hands is superseded, and the result is governed by the number of votes to which each member is entitled by the regulations of the company. Usually the rule is one vote for every share.

Assuming that the number of shares represented and cast at the meeting is 10,000, an extraordinary resolution would be carried if 7,500 shares were recorded in favour of the resolution.

FORM OF POLLING PAPER

Resolution : That the Company be Wound Up Voluntarily.

Shareholder's Name.	Register Folio.	Voting as Proxy for.	No. of Proxy.	Register Folio.	Votes For the Resolution	Votes Against the Resolution.

LIST OF PROXIES

No. of Proxy	Name of Proxy.	Name of Appointor.	REGISTER OF MEMBERS.		No. of Votes.
			Proxy.	Appointor.	

Special Resolution

A special resolution may be defined as an extraordinary resolution which is passed at a meeting of which not less than twenty-one days' notice has been given.

The meetings must be "duly convened," i.e. in accordance with the regulations. Twenty-one days' notice is necessary, but if less than twenty-one days' notice has been given, and "a majority together holding not less than 95 per cent in nominal value of the shares" so agree, the resolution may, nevertheless, be passed as a special resolution (141 (2)).

Effect of Adjournment

Notice need not be given of the date of the adjourned meeting (*Wills v. Murray*, 1850, 4 Ex. 843), unless the regulations so require, or the date of the adjournment is not fixed. It further follows that only business not dealt with at the first meeting can be transacted. (As to effect of an adjournment upon proxies, see p. 94.) But a resolution passed at the adjourned meeting must be treated as having been passed on the date of that adjourned meeting (Sect. 144).

The resolution is passed in the same manner as an extraordinary resolution, i.e. by a three-fourths majority of the members present entitled to vote and voting, or (in the case of a poll) of the votes which are cast. Thus, if twenty-one persons entitled to vote are present, sixteen personally present and five by proxy, the resolution is passed on a show of hands if all sixteen vote and twelve are in favour. It is assumed that the five represented by proxy are individual and not corporate members.

Persons who do not vote are not counted. Proxies are not counted on a vote by show of hands, except in the case of a proxy appointed by a corporate member. (*re Kelantan Coco Nut Estates*, 1920, W.N. 274.)

If a poll is demanded, the vote by show of hands is superseded by the poll which records the numbers of votes to which each person (and any proxy he may hold) is entitled. The three-fourths majority is then calculated according to the actual votes recorded. Sect. 138 of the Companies Act, 1948, provides that a member "need not if he votes, use all his votes or cast all the votes he uses in the same way." (See p. 58 as to "two-way proxies.")

A printed copy of the special resolution must be sent to the Registrar of Companies within fifteen days of its passing. (Sect. 143 of the 1948 Act.) But in the case of an "exempt private company" the copy need

not be printed but be in some other form approved by the Registrar (Sect. 143). If the meeting has been adjourned and the resolution is passed at the adjournment, the prescribed fifteen days must, of course, run from the date of the adjournment, that being the date of the resolution (Sect. 144).

A copy must also be embodied in or annexed to every copy of the Articles issued after the confirmation of the resolution (Sect. 143 (2)). Where companies reprint their Articles of Association, such special resolutions would usually be incorporated in the text with a side-note giving date of resolution. If the company is registered without Articles, Table A applies and Sect. 143 (3) requires a printed copy of resolutions to be forwarded to any member on payment of one shilling.

Amendment of Extraordinary and Special Resolutions

Amendments within the scope of the notice are permissible in the case of both extraordinary and special resolutions. Thus, a resolution to increase the capital from £100,000 to £200,000 could not be amended so as to increase that amount, but an amendment that £150,000 be substituted for £200,000 would appear to be in order. Such amendments would be passed as an ordinary resolution and not require a three-fourths majority. But amendments must not alter materially the resolution as stated in the notice. The question is not without difficulty, as some authorities hold that, in view of the wording of Sect. 141 (1), no amendments are permissible.

Rescission of a motion cannot, as a rule, take place at the meeting at which it is passed. If Articles of Association or other regulations do not cover the point, some limit of time (say three months) should be allowed after passing before rescission, and explicit notice of the proposal to rescind should be given.

Circulation of Shareholders' Resolutions

Sect. 140 of the Companies Act, 1948, lays on a company the duty, on the requisition of members, to give to members notice of resolutions to be brought forward at an annual general meeting and to circulate a statement of 1000 words or less with respect to any matter mentioned in the resolution or to the business of the meeting.

The number of members necessary for such a requisition of a resolution is—

(a) any number of members representing not less than one-twentieth of the total voting rights of all the members having at the date of the requisition a right to vote at the meeting to which the requisition relates; or

(b) not less than one hundred members holding shares in the company on which there has been paid up an average sum, per member, of not less than one hundred pounds.

Notice of any such resolution must be given, and any such statement must be circulated, to members of the company entitled to have notice of the meeting sent to them by serving a copy of the resolution or statement on each such member in any manner permitted for service of notice of the meeting, and notice of any such resolution must be given to any other member of the company by giving notice of the general effect of the resolution in any manner permitted for giving him notice of meetings of the company. There is a provision, that the copy shall be served, or notice of the effect of the resolution shall be given, as the case may be, in the same manner and, so far as practicable, at the same time as notice of the meeting and, where it is not practicable for it to be served or given at that time, it is to be served or given as soon as practicable thereafter.

See also Chapter V.

Class Resolutions

A fourth species of resolution, differing from ordinary, extraordinary and special resolutions, is frequently found, designed to protect interests in a special manner. Thus it may be provided that the rights of preference shareholders may be modified or varied by a specified majority, e.g. three-fourths in value of such preference shareholders present in person or by proxy (cf. Clause 4, Table A). In the case, for instance, *Hemans v. Hotchkiss Ordnance Co.*, 1899, 1 Ch. 115, the quorum necessary for a class meeting was members of the class holding or representing by proxy three-fourths of the nominal amount of the issued shares of that class, and the same quorum was required for an adjourned meeting.

Sect. 143 applies to these resolutions, and a printed copy must be filed with the registrar, and also a copy must be embodied in the articles.

Defamatory Statements at General Meetings

A general meeting of shareholders is a privileged occasion, and defamatory statements made thereat would be privileged and not actionable unless the speaker was actuated by malice. "Malice is not confined to personal spite and ill will, but includes every unjustifiable intention to inflict injury on the person defamed or every wrong feeling in a man's mind." (*Stuart v. Bell*, 1891, 2 Q.B. 341.)

The case of *Royal Aquarium, etc., Society v. Parkinson*, 1892, 1 Q.B. 443, is also applicable (see p. 24).

The principle is that the shareholder is addressing his fellow shareholders on a matter of common interest, the speaker having an interest in making the statement, and the others having a corresponding interest in having it made to them. Where these two things coexist the occasion is a privileged one. (*Watt v. Langsdon*, 1929, 45 T.L.R. 619.)

See also "New Forms of Notice"—page 53.

CHAPTER X

VOTING AND PROXIES

VOTES at the meeting are ascertained first of all by show of hands. This is the common law rule which applies equally to statutory and registered companies governed by the Companies (Clauses) Act, 1845, and the Companies Act, 1948, respectively.

We will first of all consider what may be termed the common law of the country as to voting at meetings. It is undoubted, and it was admitted in argument for the respondents, that, according to such common law, votes at all meetings are taken by show of hands. Of course, it may not always be a satisfactory mode—persons attending in large numbers may be small shareholders, and persons attending in small numbers may be large shareholders, and, therefore, in companies provision is made for taking a poll, and when a poll is taken the votes are to be counted according to the number of shares; in some cases according to the number of shares absolutely, as in this company, viz., a vote for every share, while in other companies there is another scale. Now, that being the common law mode of voting, is there anything in the Companies Act or in the articles of association which shows that any other mode is to be adopted, for in the absence of provision to the contrary the common law will prevail?

So far from finding anything in the Act or in the articles to the contrary, what little I do find confirms the view that the voting is to be by show of hands. (Jessel, M.R., *in re Horbury Bridge Co.*, 1879, 11 Ch.D. 109.)

Clause 62 of Table A provides—

Subject to any rights or restrictions for the time being attached to any class or classes of shares, on a show of hands every member present in person shall have one vote, and on a poll every member shall have one vote for each share of which he is the holder.

Each person present and entitled to vote has only one vote on a show of hands, without reference to his shareholding or to his representing other shareholders by proxy. The question was definitely settled in *Ernest v. Loma Gold Mine* (1897, 1 Ch. 1).

Absent members who have appointed proxies vote by those proxies ; but, unless a poll is demanded, the person present is only counted once, however numerous may be the persons whom he represents. Such is admitted to be the common practice. But it is contended that the practice in this respect is inconsistent with Sect. 51, and that, when that section applies, as it does in this case, each absentee, whose proxy is present and who votes, is entitled to be treated as present himself, and as holding up his hand, so that on a show of hands each person present and entitled to vote and voting ought to be counted, not once only, but once for every person whom he represents. . . . This contention is based on the words "present in person or by proxy." Absentees, it is contended, are present by their proxies and must, therefore, be counted as persons present if those proxies vote. This ingenious argument, however, fails to give sufficient effect to the words "entitled according to the regulations of the company to vote." The regulations of each company must therefore be regarded. . . . The argument of the appellant renders it necessary to say that the effect of Sect. 51 is to introduce a mode of voting by show of hands which is quite contrary to ordinary business habits and which no one has ever known adopted in practice. (Per Lindley, M.R.)

The chairman's declaration as to the result of the voting is conclusive unless it is fraudulent or on the face of it wrong. (*Arnot v. United African Lands*, 1901, 1 Ch. 518 ; *re Caratal (New) Mines, Ltd.*, 1902, 2 Ch. 498.) And where the articles provide that objections to the validity of votes must be made at the meeting, the chairman's *bona fide* ruling as to validity is final. (*Wall v. Exchange Investment Corporation*, 1926, 1 Ch. 143.)

Proceedings at a Poll

Sect. 137 of the Companies Act, 1948, declares void any clauses of articles of association excluding the right to demand a poll at a general meeting on any question other than the election of chairman or adjournment. The regulations usually state the minimum number who can demand a poll. Thus, Clause 58 of Table A enables a poll to be demanded by the chairman or at least three members, present in person or

by proxy, or by members representing not less than one-tenth of the total voting rights or by members holding shares conferring voting rights, being shares on which an aggregate sum has been paid up equal to not less than one-tenth of the total sum paid up.

The poll should be demanded before the next business is proceeded with, i.e. as soon as the chairman has declared the result of the voting by show of hands. But the regulations may provide for a demand for a poll to be lodged before the declaration of the result of the show of hands.

If a poll can only be demanded by persons who hold a certain proportion of the share capital, one member who holds the requisite capital can effectively demand the poll, and in the case of joint-holders holding the requisite capital, a demand signed by such joint-holders is in order. (*Siemens Bros. v. Burns*, 1918, 2 Ch. 324.)

To exercise their voting rights fully, joint-holders may have their holdings split, a different name standing first in each entry in the register. (*Burns v. Siemens Bros.*, 1919, 1 Ch. 225.)

It is doubtful whether the demand can be withdrawn without the consent of the meeting. In *Rex v. Mayor of Dover* (1903, 1 K.B. 668), a meeting was held of owners and ratepayers at which a poll was demanded. The meeting then closed. A few days after the meeting the demand for a poll was withdrawn, and the question for the Court was whether the Mayor had been right in holding that the poll could not be legally held after the withdrawal of the demand. It was decided that the poll should have been held.

After the demand has been made, and the town clerk has said that a poll will be held, the other persons present would naturally remain quiet, and to allow the demand to be withdrawn privately might lead to all manner of collusion, and the owners and ratepayers might be deprived of their statutory right to a poll. Personally, I am inclined to think that the

demand cannot be withdrawn after it has⁴ once been accepted. (Per Darling, J.)

But at a company meeting, provided that the withdrawal takes place during its continuance, it seems that the chairman, with the consent of those present, can accept a withdrawal.

Table A (Clause 58) says "The demand for a poll may be withdrawn."

It was formerly doubtful whether the demand had to be made by members present in person or whether a proxy could demand a poll. The Companies Act, 1948, Sect. 137, now provides that a proxy, who may be a non-member, can demand a poll. Incidentally a non-member proxy may address the meeting of a private (but not a public) company.

Where a poll can be demanded by persons holding a specified number of shares, one person, or two or more joint-holders, holding the necessary share qualification can demand the poll. (*Siemens Bros. v. Burns*, 1918, 2 Ch. 324.)

The chairman will usually have a second or casting vote, but the regulations must so provide.

The institution of a second or casting vote, as it is called, is the creation of the statute law, introduced for the purpose of avoiding the deadlock which would otherwise ensue. (*Nell v. Longbottom*, 1894, 1 Q.B. 767.)

Such casting vote may be given contingently. Clause 60 of Table A (*supra*) gives the chairman of the meeting a second or casting vote.

It should be noted that this refers to the chairman at the particular meeting at which the poll is demanded, who may or may not be the chairman appointed under the articles.

The chairman has a vote as a member, and accordingly, if before he votes the voting is equal, the chairman would then vote as a member, and would not deliver a casting vote. If the voting (including the chairman's

vote as a member) is equal, the chairman can then deliver a casting vote which usually would be against the motion.

As stated, the casting vote can be made contingently, i.e. if the result of the poll should be in favour of (or against) a motion the chairman's casting vote shall be recorded in a certain way. (*Bland v. Buchanan*, 1901, 2 K.B. 75.)

The poll cannot be taken by polling papers signed by the members and sent to or left at the company's office, unless the regulations so provide. In other words the member who wishes to vote on a poll must attend personally or by proxy and record his vote. (*McMillan v. Le Roi Mining Co.*, 1906, 1 Ch. 331.) And what are called "two-way" proxies may be used if the articles permit. See, for example, Clause 71 of Table A *post*.

The fixing of a future date for holding the poll is not an adjournment of the meeting so as to enable fresh proxies to be lodged.

The regulations commonly provide that proxies may be lodged a prescribed time before an adjourned meeting. But the mere fixing of a date for a poll is a continuance of the meeting for the purpose of taking a poll. Hence in these circumstances there is no adjournment, and the only proxies available would be those lodged the specified period before the original meeting. (*Shaw v. Tati Concessions*, 1913, 1 Ch. 292.) (See "Adjourned Meetings and Proxies," page 96).

Each resolution must be submitted separately to be voted on at the poll. In *Patent Wood Keg Syndicate v. Pearse* (1906, W.N. 164) it appears that there were four resolutions dealing with a release of the vendors from claims by the company, directing that legal proceedings should be discontinued, calling on the directors to resign, and appointing new directors. After each resolution had been carried by show of

hands a poll was demanded, and the four resolutions were submitted *en bloc*.

It was held that the poll was invalid.

With regard to the resolutions themselves which were put to the meeting, they dealt with distinct matters, and a poll ought to have been taken on each. It was, in fact, so demanded after the resolutions had been successively put to the meeting and carried. The poll, however, was taken of all the resolutions *en bloc*, the effect being that the shareholders had to vote either for all or none. (Per Buckley, J.)

On a poll a member need not use all his votes or cast them all the same way. (Sect. 138)

Voting at Meetings of Statutory Companies

Sects. 75 and 76 of the Companies Clauses Act, 1845, provide as follows—

VOTES OF SHAREHOLDERS

25. At all general meetings of the company every shareholder shall be entitled to vote according to the prescribed scale of voting, and where no scale shall be prescribed every shareholder shall have one vote for every share up to ten, and he shall have an additional vote for every five shares beyond the first ten shares held by him up to one hundred, and an additional vote for every ten shares held by him beyond the first hundred shares; provided always, that no shareholder shall be entitled to vote at any meeting unless he shall have paid all the calls then due upon the shares held by him.

MANNER OF VOTING

26. The votes may be given either personally or by proxies, being shareholders, authorized by writing according to the form in the Schedule (F) to this Act annexed, or in a form to the like effect, under the hand of the shareholder nominating such proxy, or if such shareholder be a corporation, then under their common seal; and every proposition at any such meeting shall be determined by the majority of votes of the parties present, including proxies, the chairman of the meeting being entitled to vote, not only as a principal and proxy, but to have a casting vote if there be an equality of votes.

Proxies

Any member of a company entitled to attend and vote at a meeting may appoint another person as his

proxy to attend and vote in his stead, and such other person need not be a member of the company. At the meetings of private companies he will have the same right to speak as the member he represents. Unless articles provide otherwise a member cannot appoint more than one proxy for any meeting of a private company. The proxy vote will count only on a poll. (Sect. 136.)

Clauses 67 to 72 of Table A provide—

67. On a poll votes may be given either personally or by proxy

68. The instrument appointing a proxy shall be in writing under the hand of the appointer or of his attorney duly authorized in writing, or, if the appointer is a corporation, either under seal, or under the hand of an officer or attorney duly authorized. A proxy need not be a member of the company.

69. The instrument appointing a proxy and the power of attorney or other authority, if any, under which it is signed or a notarially certified copy of that power or authority shall be deposited at the registered office of the company or at such other place within the United Kingdom as is specified for that purpose in the notice convening the meeting, not less than 48 hours before the time for holding the meeting or adjourned meeting, at which the person named in the instrument proposes to vote, or, in the case of a poll, not less than 24 hours before the time appointed for taking the poll, and in default the instrument of proxy shall not be treated as valid.

70. An instrument appointing a proxy shall be in the following form or a form as near thereto as circumstances admit—

“Limited.
I/We, _____, of _____, in the
county of _____, being a member/members of
the above named company, hereby appoint
of _____, or failing him, _____, of
_____, as my/our proxy to vote for me/us
on my/our behalf at the [annual or extraordinary, as the
case may be] general meeting of the company to be held
on the _____ day of _____ 19____, and at any adjourn-
ment thereof.

Signed this _____ day of _____ 19____.”

71. Where it is desired to afford members an opportunity of

voting for or against a resolution the instrument appointing a proxy shall be in the following form or a form as near thereto as circumstances admit—

“
Limited
 I/We, _____, of _____
 in the county of _____, being a member/members
 of the above-named company, hereby appoint
 of _____, or failing him
 of _____, as my/our proxy to vote for me/us on
 my/our behalf at the [annual or extraordinary, as the case
 may be] general meeting of the company, to be held on
 the _____ day of _____ 19____, and at any
 adjournment thereof.

Signed this _____ day of _____ 19____.

This form is to be used *in favour of the resolution.
against

Unless otherwise instructed, the proxy will vote as he thinks fit.

* Strike out whichever is not desired.”

72. The instrument appointing a proxy shall be deemed to confer authority to demand or join in demanding a poll.

The following points should be noted—

- (1) A proxy need not be a member of the company.
- (2) The person appointing the proxy must also be under no disqualification. Thus, under Clause 65 it is provided that—

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.

A common provision is that a member must have held his shares for a certain period (e.g. three months) before the meeting.

- (3) Two-way proxies are not compulsory but may be authorized by the articles.

- (4) The proxy must be lodged the prescribed period before the meeting, but Sect. 136 (3) provides for its deposit not less than forty-eight hours before the meeting or adjourned meeting.

Adjourned Meetings and Proxies

Sect. 136 (3) is new and important as it provides—

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.

Clause 69 of Table A is based on this section and provides that the instrument appointing a proxy must be deposited at the registered office or at such other place as may be specified in the notice convening the meeting "not less than 48 hours before the time for holding the meeting or adjourned meeting, at which the person named in the instrument proposes to vote, or, in the case of a poll, not less than 24 hours before the time appointed for the taking of the poll, and in default the instrument of proxy shall not be treated as valid."

An adjourned meeting is legally a continuation of the original meeting (*Scadding v. Lorant*, 1851, 3 H.L.C. 418).

(5) The proxy must be in the form required by the regulations. It has been held that where the regulations require a proxy to be witnessed attestation is imperative (*Harben v. Phillips*, 1883, 23 Ch.D. 14), and where it is provided that a proxy executed by a corporate member must be under seal, sealing is also imperative unless the corporate member is a foreign corporation which, according to law, need not have a common seal. In the latter case an unsealed proxy must be accepted. (*Colonial Gold Reef, Ltd. v. Free State Rand*, 1914, 1 Ch. 382.)

In *Bombay-Burmah Trading Co. v. Shroff* (1905, A.C. 213) the articles provided that the proxy must be lodged a specified time "before the meeting at which the person named in such instrument proposes to vote." It was held that the proxy was valid, although

the person named was not qualified to act at the date of his appointment, the qualification being obtained before the date of the meeting. Here the power of attorney by which he was appointed was given to A, B, or C, or any future member of a certain firm.

Shroff became a member of the firm before the date of the meeting.

(6) Although proxies are usually lodged for examination at the company's office, foreign shareholders may lodge their proxies at the company's office abroad and the result be telegraphed to this country. (*re English, Scottish, and Australian Bank*, 1893, 3 Ch. 385.)

(7) The proxy must be stamped. The instrument is stamped 1d. (impressed or adhesive) if it is to be used for one specified meeting which includes any adjournment. If for more than one meeting the stamp is ten shillings.

An adhesive stamp must be cancelled at the time of the execution of the proxy, usually by the appointor writing his name across it, but any form of cancellation which effectually prevents the stamp being detached and used for another purpose (e.g. upon a letter) is sufficient. (*McMullen v. "Sir Alfred Hickman" Steamship Co.*, 1902, 71 L.J. Ch. 766.)

I think it was properly and effectively cancelled so as to prevent it being used again. Nor is it necessary that the signature and date should be written across the stamp, for the new Act of 1891 was altered in this very respect from the old Section 24 of the Act of 1870. The new Section 8, subsection 1, materially varies the old provision for the very purpose of altering the rule.

Every person who makes or executes or votes or attempts to vote, under or by means of any such . . . voting paper not being duly stamped shall incur a fine of £50 and every vote given or tendered under the authority or by means of such voting papers shall be void. (Sect. 80 (3), Stamp Act, 1891.)

(8) A proxy in favour of two persons in the alternative may be in order, the first named person, if in attendance, being the one allowed to vote.

(9) A proxy may be revoked at any time before the person appointed thereby has acted upon it. A verbal intimation to the chairman by the appointor is sufficient.

But if the articles provide that notice of revocation must be received "before the meeting," and a poll has been directed to be held at a later date, a written revocation lodged before the date of the poll is invalid. (*Spiller v. Mayo (Rhodesia) Development Co., Ltd.*, 1926, 161 L.T.J. 212.)

The position when both the person who has appointed a proxy and the proxy attend a meeting was considered in *Cousins v. International Brick Co.*, 1931, 2 Ch. 90. It was held that, in the absence of a special contract providing otherwise, the right of a shareholder to vote in person is paramount to the right of the proxy.

(10) Directors acting *bona fide* in the interests of the company may send out proxy forms with their own names inserted therein, accompanied by circulars advocating their policy, at the expense of the company. (*Peel v. London and North Western Railway*, 1907, 1 Ch. 5.) But such proxy forms must be sent to all the members (Sect. 136 of the Companies Act, 1948) and the rule applies equally to general and class meetings.

Regulations of Statutory Companies as to Proxies, etc.

Sects. 77 to 80 of the Companies Clauses Act, 1845, provide—

REGULATIONS AS TO PROXIES

77. No person shall be entitled to vote as a proxy unless the instrument appointing such proxy has been transmitted to the secretary of the company the prescribed period, or, if no period be prescribed, not less than forty-eight hours before the time appointed for holding the meeting at which such proxy is to be used.

VOTES OF JOINT SHAREHOLDERS

78. If several persons be jointly entitled to a share, the person whose name stands first in the register of shareholders

VOTES OF LUNATICS AND MINORS, ETC.

8—(B.6023)

shareholder in the company. (Sect. 2 of the Companies Clauses Consolidation Act, 1889.)

The Companies Clauses Consolidation Act, 1888, provides—

2. To section seventy-six of the Companies Clauses Consolidation Act, 1845, the following words shall be added: "Provided, that where the shareholder is [a member of¹] a body corporate, the proxy may be any member of such body, though not personally a shareholder in the company."

[¹ *Note*.—These words are to be omitted, Companies Clauses Consolidation Act, 1889, repealed by the Statute Law Revision Act, 1908, but without affecting this point.]

3. Such a proxy shall, during the continuance of his appointment, be taken in virtue thereof to be a shareholder in the company to which his appointment relates, holding the number of shares held by the corporation by whom he is appointed, for all purposes except the transfer of any such share or the giving receipts for any dividend thereon.

4. The appointment may be made and revoked in the following form—

FORM OF PROXY PAPERS

1. *General Appointment*

WE, the _____, being a body corporate, and one of the proprietors of the _____ company, hereby appoint AB, of _____, who is hereby certified to be a member of this corporation, to be our proxy, to vote in our name as he shall think proper upon any matter relating to the several undertakings proposed at any meeting of the said company to be held during the continuance of this appointment, and otherwise to be our representative in such company.

In witness whereof the common seal of the said corporation, attested as is required by its regulations, is hereto set this day of _____.

2. *Revocation of General Proxy*

WE, the _____, hereby revoke the appointment of _____, of _____, who is our proxy in the _____ company, made by an instrument under our common seal, and dated the _____ day of _____.

In witness whereof the common seal of the said corporation, attested as is required by its regulations, is set hereto the day of _____.

[An instrument in this form shall not require any stamp.]

3. *Special Appointment*

WE, the _____, being a body corporate, and one of the proprietors of the _____ company, do hereby appoint AB, of _____, who is hereby certified to be a member of this corporation, to vote in our name as he shall think proper upon any matter relating to the said undertaking proposed at the meeting of the proprietors of the said company to be held on the _____ day of _____ next, or at any adjournment thereof.

In witness whereof the common seal of the said corporation, attested as is required by its regulations, is set hereto this _____ day of _____.

Foss v. Harbottle

Before closing this chapter mention should be made of what is known as "the rule in *Foss v. Harbottle*" (1843), 2 Hare 461. The rule is that the Court does not wish to interfere in the internal affairs of a company and that all domestic matters must be left to the majority of members—unless, of course, there is fraud or other illegality present. As was stated in *Burland v. Earle* (1902), A.C. 83: "It is an elementary principle of the law relating to joint stock companies that the Courts will not interfere with the internal management of companies acting within their powers and, in fact, have no jurisdiction to do so. Again, it is clear law that in order to redress a wrong done to the company, or to recover moneys or damages alleged to be due to the company, the action should *prima facie* be brought by the company itself. These cardinal principles are laid down in the well-known cases of *Foss v. Harbottle* and *Mozley v. Alston*.¹ . . . It should be added that no mere informality or irregularity which can be remedied by the majority will entitle the minority to sue if the act when done regularly would be within the powers of the company and the intention of the majority of the shareholders is clear."

Lindley, L.J., in *Browne v. La Trinidad* (1887), 37 Ch.D. 17, said: "I think it is most important that

¹ See p. 223.

the Court should hold fast to the rule (the 'rule in *Foss v. Harbottle*') upon which it has always acted, not to interfere for the purpose of forcing companies to conduct their business according to the strictest rules, where the irregularity complained of can be set right at any moment."

Precedent Minutes

Minutes of the (Sixth) Annual General Meeting of the AB Company, Ltd., held at Salisbury House, London Wall, E.C.2, on, etc.

Present : AB (Chairman).

CD } (Directors).
EF }

GH (Secretary).

IJ (Solicitor).

KL (Auditor).

There were also present shareholders.

The Secretary read the notice convening the meeting and the report of the Auditor was read by Mr. KL.

The Chairman addressed the meeting, and referred to several of the more important items in the Balance Sheet.

The Chairman moved and Mr. CD seconded, and it was unanimously *Resolved*—

That the Sixth Annual Report, Balance Sheet, and Profit and Loss Appropriation Account thereto annexed and now before the meeting, be adopted and passed.

Resolved : That a final dividend of 25 per cent (less tax), making 30 per cent for the year to 31st October, 19—, be, and the same is hereby declared, payable forthwith.

Resolved : That the retiring Director, Mr. CD, be re-elected.

Resolved : That the retiring Director, Mr. EF, be re-elected.

A vote of thanks to the Directors, as well as to the management and staff, concluded the proceedings.

Variations

[After the motion to pass the Report and Accounts has been proposed and seconded.]

1. Mr. — moved the following amendment: That the meeting appoint here and now a committee of investigation, consisting of five shareholders, with power to add to their number, and that the Board shall furnish or provide such committee with all documents and papers, the assistance of the accountants to the company or any other person or persons in the employ of the company whose aid is essential in investigating the affairs of the company. The amendment was

seconded by Mr. —. The Chairman, after consultation with the Solicitor, stated that the proposed amendment was out of order.

Or,

The Chairman ruled the amendment out of order, but explained the procedure for applying to the Board of Trade for an inspection under Sect. 164.

2. The amendment was lost on a show of hands, and on the original motion being put to the meeting it was not carried by the necessary three-quarters majority. A poll being duly demanded and taken, the result was declared by the Chairman as follows—

3. Mr. — moved and Mr. — seconded the motion that the retiring Director, Mr. EF, be re-elected.

Mr. — proposed as an amendment that Mr. GH be elected.

The amendment was not seconded, and it was resolved that the retiring Director, Mr. EF, be re-elected.

4. The three Resolutions were put separately to the meeting, and in each case declared by the Chairman to be lost. A poll was then demanded, and was taken forthwith, with the following result—

Resolution No. 1. That, etc.

Against :

For :

Resolution No. 2. That, etc.

Against :

For :

Resolution No. 3. That, etc.

Against :

For :

(See page 105.)

5. The Solicitor pointed out that the meeting had no power to consider the question of the issue of new Debentures, having regard to the purposes for which the meeting had been called, and that the meeting could only consider matters of which notice had been given to the shareholders.

6. That the Accounts to 31st December, 19—, together with the Report of the Directors and Auditors thereon submitted to this meeting be and they are hereby received and adopted, and that a dividend of 9d. per share, less income-tax, for the year 19— be, and is hereby, declared.

7. That the Report of the Directors and Statement of Accounts and Balance Sheet for the year to 31st May, 19—, be received and adopted, and that the interim dividends paid on 20th November, 19—, and 4th June, 19—, amounting to 5 per cent and the recommendation of the Directors to pay a final dividend of 2½ per cent, making 7½ per cent for the year, all less income-tax, be confirmed.

8. That the payment of the Preference dividends be confirmed and that a final dividend of 20 per cent (making 30 per cent for the year) less income-tax at —s. —d. be paid on the 3rd inst. on Ordinary shares, and that the sum of £7,000 be transferred from Profit and Loss Account to General Reserve Account, and that the balance of £10,873 be carried forward.

9. That the Directors' Report and Audited Accounts and Balance Sheet for the year ended 31st October last be and are hereby received and adopted.

The Chairman pointed out that the passing of the Resolution included all payments of dividends and the allocations to the various reserves.

10. That the Directors' Report and Accounts to 30th June, 19— be, and they are hereby, received and adopted, and that a final dividend be declared of 10 per cent, free of income-tax, making 20 per cent for the year free of income-tax, payable on 9th December, 19—.

11. That the appointment to the Board of Mr. —, effected since the last meeting, be confirmed.

ADJOURNED GENERAL MEETING

Minutes of the Sixth Ordinary General Meeting of the AB Company, Ltd, held on and adjourned until, etc.

Present :

There were present shareholders.

The Chairman, having asked for a statement from the two shareholders, appointed at the previous meeting to consult with the Directors as to the position of the Company, Mr. — and Mr. — reported that they had put forward a suggestion that the Company should be amalgamated with the CD Company, on a share for share basis.

The Chairman replied that he felt sure he would be able to secure the approval of the Company to an amalgamation, on the lines suggested, but that the matter would have to be formally submitted to the shareholders.

Resolved : That the Accounts for the year ended 30th June last, together with the Directors' Report, be approved and adopted.

EXTRAORDINARY GENERAL MEETING

Minutes of an Extraordinary General Meeting of the AB Company, Ltd., held, etc.

Present :

There were present Preference shareholders and
Ordinary shareholders.

The Secretary read the notice convening the meeting.

The Chairman stated that the Articles of Association had

various alterations made from time to time, and further alterations would have to be made for the purpose of obtaining a Stock Exchange quotation. It was also necessary to increase the capital of the Company.

Resolved : That the Articles of Association contained in the document submitted to the meeting and for the purpose of identification subscribed by the Chairman thereof be, and the same are hereby, adopted as the Articles of Association of the Company in substitution for and to the exclusion of all the existing Articles thereof.

Resolved : That the capital of the Company be increased from £100,000 to £150,000, divided into 150,000 shares of £1 each.

A vote of thanks to the Chairman terminated the proceedings.

Re-election of Directors

In *Grundt v. Great Boulder Proprietary G.M., Ltd.* (1948, Ch. 145) a resolution for the re-election of a director was lost, but it was held that he was automatically re-elected because no other appointment was made. This anomaly is now rectified where the articles provide (Table A, clause 92) that a retiring director is not to be deemed to be re-elected where it is expressly resolved not to fill the vacated office or a resolution for his re-election has been put to the meeting and lost.

CHAPTER XI

REQUISITIONED MEETINGS

THE directors of a registered company may be called upon by the shareholders to convene a meeting, and in default the shareholders may themselves convene the meeting.

Sect. 132 of the Companies Act, 1948, provides—

132. (1) The directors of a company, notwithstanding anything in its articles, shall, on the requisition of members of the company holding at the date of the deposit of the requisition not less than one-tenth of such of the paid-up capital of the company as at the date of the deposit carries the right of voting at general meetings of the company, or, in the case of a company not having a share capital, members of the company representing not less than one-tenth of the total voting rights of all the members having at the said date a right to vote at general meetings of the company, forthwith proceed duly to convene an extraordinary general meeting of the company.

(2) The requisition must state the objects of the meeting, and must be signed by the requisitionists and deposited at the registered office of the company, and may consist of several documents in like form each signed by one or more requisitionists.

(3) If the directors do not within twenty-one days from the date of the deposit of the requisition proceed duly to convene a meeting, the requisitionists, or any of them representing more than one-half of the total voting rights of all of them, may themselves convene a meeting, but any meeting so convened shall not be held after the expiration of three months from the said date.

(4) A meeting convened under this section by the requisitionists shall be convened in the same manner, as nearly as possible, as that in which meetings are to be convened by directors.

(5) Any reasonable expenses incurred by the requisitionists by reason of the failure of the directors duly to convene a meeting shall be repaid to the requisitionists by the company, and any sum so repaid shall be retained by the company out of any sums due or to become due from the company by way of fees or other remuneration in respect of their services to such of the directors as were in default.

(6) For the purposes of this section, the directors shall, in the case of a meeting at which a resolution is to be proposed as a special resolution, be deemed not to have duly convened the meeting if they do not give such notice thereof as is required by section one hundred and forty-one of this Act.

The members entitled to requisition a meeting of a company limited by shares under the section must hold one-tenth of such of the paid-up capital as carries the right of voting. Consequently, holders of shares not entitled to vote cannot join in a requisition.

It was decided in *Italian Railway Construction v. Cooper* (1904, S.J. 20) that the requisition can be made by one person holding the requisite amount of capital. If the requisitionists include joint-holders of shares all the joint-holders must sign the requisition.

As Sub-sect. 3 of the section clearly shows, the directors have twenty-one days after receipt of the requisition to decide whether they will convene a meeting or not.

A point not yet settled is whether the requisitionists can call upon the secretary to issue the necessary notices, but usually the directors would authorize the secretary to afford the necessary facilities. This view certainly expresses the spirit of Sub-sect. 4.

Fourteen days' notice is necessary for a requisitioned meeting of a limited company unless a special resolution is to be passed, when twenty-one days' notice is required. Where the regulations are silent as to meetings, Sect. 134 of the Companies Act, 1948, provides the following—

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.

This section is available both when the regulations are silent as to meetings, which is rarely the case, and also when existing regulations cannot be put into force, e.g. through inability of directors to act.

In *re Brick and Stone Co.* (1878, W.N. 140) it was so held, the Master of the Rolls observing "it appears to me that where, under the existing regulations of a company, you cannot call a meeting, in any event Sect. 52 of the 1862 Act, now Sect. 67 of the Companies Consolidation Act, 1908, comes into force." (Sect. 67 has been repealed and its place taken by Sect. 134.)

And Sect. 135 reads—

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.

Statutory Companies

Sect. 70 of the Companies Clauses Act, 1845, provides—

EXTRAORDINARY MEETINGS MAY BE REQUIRED BY SHAREHOLDERS

70. It shall be lawful for the prescribed number of shareholders, holding in the aggregate shares to the prescribed amount, or, where the number of shareholders or amount of shares shall not be prescribed, it shall be lawful for twenty or more shareholders holding in the aggregate not less than one-tenth of the capital of the company, by writing under their hands, at any time to require the directors to call an extraordinary meeting of the company; and such requisition shall fully express the object of the meeting required to be called, and shall be left at the office of the company, or given to at least three directors, or left at their last or usual places of abode; and forthwith upon the receipt of such requisition the directors shall convene a meeting of the shareholders; and if for twenty-one days after such notice the directors fail to call such meeting, the prescribed number, or such other number as aforesaid, of shareholders, qualified as aforesaid, may call such meeting, by giving fourteen days public notice thereof.

Class Meetings

The regulations commonly provide that the rights or privileges of a class, e.g. the holders of preference shares, shall only be modified by resolution passed at a meeting of that class.

Thus Clause 4 of Table A provides—

4. If at any time the share capital is divided into different classes of shares, the rights attached to any class (unless otherwise provided by the terms of issue of the shares of that class) may, whether or not the company is being wound up, be varied with the consent in writing of the holders of three-fourths of the issued shares of that class, or with the sanction of an extraordinary resolution passed at a separate general meeting of the holders of the shares of the class. To every such separate general meeting the provisions of these regulations relating to general meetings shall apply, but so that the necessary quorum shall be two persons at least holding or representing by proxy one-third of the issued shares of the class and that any holder of shares of the class present in person or by proxy may demand a poll.

But Sect. 72 of the Companies Act, 1948, enables dissentients to apply to the Court for protection.

Sect. 72 is as follows—

VARIATION OF SHAREHOLDERS' RIGHTS

72. (1) If, in the case of a company the share capital of which is divided into different classes of shares, provision is made by the memorandum or articles for authorizing the variation of the rights attached to any class of shares in the company, subject to the consent of any specified proportion of the holders of the issued shares of that class or the sanction of a resolution passed at a separate meeting of the holders of those shares, and in pursuance of the said provision the rights attached to any such class of shares are at any time varied, the holders of not less in the aggregate than fifteen per cent of the issued shares of that class, being persons who did not consent to or vote in favour of the resolution for the variation, may apply to the court to have the variation cancelled, and, where any such application is made, the variation shall not have effect unless and until it is confirmed by the court.

(2) An application under this section must be made within twenty-one days after the date on which the consent was given or the resolution was passed, as the case may be, and may be made on behalf of the shareholders entitled to make the application by such one or more of their number as they may appoint in writing for the purpose.

(3) On any such application the court, after hearing the applicant and any other persons who apply to the court to be heard and appear to the court to be interested in the application, may, if it is satisfied, having regard to all the circumstances of the case, that the variation would unfairly prejudice the shareholders of the class represented by the applicant, disallow the variation and shall, if not so satisfied, confirm the variation.

(4) The decision of the court on any such application shall be final.

(5) The company shall within fifteen days after the making of an order by the court on any such application forward a copy of the order to the registrar of companies, and, if default is made in complying with this provision, the company and every officer of the company who is in default shall be liable to a default fine.

(6) The expression "variation" in this section includes abrogation and the expression "varied" shall be construed accordingly.

The quorum at an adjourned meeting may be the same as for the original meeting. (*Hemans v. Hotchkiss Ordnance Co.*, 1899, 1 Ch. 115.)

Where a resolution is passed at an adjourned class meeting, Sect. 144 provides—

144. Where a resolution is passed at an adjourned meeting of—

- (a) a company;
- (b) the holders of any class of shares in a company;
- (c) the directors of a company;

the resolution shall for all purposes be treated as having been passed on the date on which it was in fact passed, and shall not be deemed to have been passed on any earlier date.

A copy of the resolution or the written consent must be filed and embodied in the articles. (Sect. 143).

Section 206

Where a compromise or arrangement is proposed between a company and its members or any class of them (e.g. where preference dividends are in arrear and it is desired to cancel them) the Court can order a meeting of the members or of the class to be summoned to pass the necessary resolution.

The section provides—

206. (1) Where a compromise or arrangement is proposed between a company and its creditors or any class of them or between the company and its members or any class of them, the court may, on the application in a summary way of the company or of any creditor or member of the company, or, in the case of a company being wound up, of the liquidator, order a meeting of the creditors or class of creditors, or of the members of the company or class of members, as the case may be, to be summoned in such manner as the court directs.

(2) If a majority in number representing three fourths in value of the creditors or class of creditors or members or class of members, as the case may be, present and voting¹ either in person or by proxy at the meeting, agree to any compromise or arrangement, the compromise or arrangement shall, if sanctioned by the court, be binding on all the creditors or the class of creditors, or on the members or class of members, as the case may be, and also on the company or, in the case of a company in the course of being wound up, on the liquidator and contributories of the company.

(3) An order made under subsection (2) of this section shall have no effect until an office copy of the order has been delivered

¹ Those who abstain from voting are ignored in calculating the majority.

to the registrar of companies for registration, and a copy of every such order shall be annexed to every copy of the memorandum of the company issued after the order has been made, or, in the case of a company not having a memorandum, of every copy so issued of the instrument constituting or defining the constitution of the company.

(4) If a company makes default in complying with subsection (3) of this section, the company and every officer of the company who is in default shall be liable to a fine not exceeding one pound for each copy in respect of which default is made.

(5)

(6) In this and the next following section the expression "company" means any company liable to be wound up under this Act, and the expression "arrangement" includes a reorganization of the share capital of the company by the consolidation of shares of different classes or by the division of shares into shares of different classes or by both those methods.

As will be noted, reorganization of capital, where the rights of members are fixed by the Memorandum of Association, is carried out under this section (Sub-sect. 6).

The necessary procedure to bind members is given in the next chapter.

By Section 207 it is laid down that—

207. (1) Where a meeting of creditors or any class of creditors or of members or any class of members is summoned under the last foregoing section there shall—

(a) with every notice summoning the meeting which is sent to a creditor or member, be sent also a statement explaining the effect of the compromise or arrangement and in particular stating any material interests of the directors of the company, whether as directors or as members or as creditors of the company or otherwise, and the effect thereon of the compromise or arrangement, in so far as it is different from the effect on the like interests of other persons; and

(b) in every notice summoning the meeting which is given by advertisement, be included either such a statement as aforesaid or a notification of the place at which and the manner in which creditors or members entitled to attend the meeting may obtain copies of such a statement as aforesaid.

(2) Where the compromise or arrangement affects the rights of debenture holders of the company, the said statement shall give the like explanation as respects the trustees of any deed for securing the issue of the debentures as it is required to give as respects the company's directors.

(3) Where a notice given by advertisement includes a notification that copies of a statement explaining the effect of the compromise or arrangement proposed can be obtained by creditors or members entitled to attend the meeting, every such creditor or member shall, on making application in the manner indicated by the notice, be furnished by the company free of charge with a copy of the statement.

(4) Where a company makes default in complying with any requirement of this section, the company and every officer of the company who is in default shall be liable to a fine not exceeding five hundred pounds, and for the purpose of this subsection any liquidator of the company and any trustee of a deed for securing the issue of debentures of the company shall be deemed to be an officer of the company:

Provided that a person shall not be liable under this subsection if that person shows that the default was due to the refusal of any other person, being a director or trustee for debenture holders, to supply the necessary particulars as to his interests.

CHAPTER XII

MEETINGS OF CREDITORS AND CONTRIBUTORIES

UNDER Sect. 206 of the 1948 Act we have seen that, where a compromise or arrangement is proposed between a company and its creditors, the Court may order a meeting of the creditors or any class to be summoned. The application to the Court is made by the company or any creditor or, if the company is being wound up, by the liquidator.

The procedure under Sect. 206 is as follows—

(1) Application to the Court for sanction to proposed meeting.

(2) Meeting held of the class or classes of creditors affected.

(3) Resolution passed by a majority in number representing three-fourths in value of the creditors present or represented by proxy.

(4) Petition to Court to sanction the compromise or arrangement, which then becomes binding on all creditors concerned as soon as an office copy of the order has been delivered to the Registrar.

Sect. 206 is available whether a company is in liquidation or a going concern.

Where the scheme concerns the reconstruction or amalgamation of a company or companies, Sect. 208 must be considered.

208. (1) Where an application is made to the court under Sect. 206 of this Act for the sanctioning of a compromise or arrangement proposed between a company and any such persons as are mentioned in that section, and it is shown to the court that the compromise or arrangement has been proposed for the purposes of or in connection with a scheme for the reconstruction of any company or companies or the amalgamation of any two or more companies, and that under the scheme the whole or any part of the undertaking or the property of any company concerned in the scheme (in this

section referred to as "a transferor company") is to be transferred to another company (in this section referred to as "the transferee company"), the court may, either by the order sanctioning the compromise or arrangement or by any subsequent order, make provision for all or any of the following matters—

(a) the transfer to the transferee company of the whole or any part of the undertaking and of the property or liabilities of any transferor company;

(b) the allotting or appropriation by the transferee company of any shares, debentures, policies, or other like interests in that company which under the compromise or arrangement are to be allotted or appropriated by that company to or for any person;

(c) the continuation by or against the transferee company of any legal proceedings pending by or against any transferor company;

(d) The dissolution, without winding up, of any transferor company;

(e) the provision to be made for any persons, who within such time and in such manner as the court directs, dissent from the compromise or arrangement;

(f) such incidental, consequential and supplemental matters as are necessary to secure that the reconstruction or amalgamation shall be fully and effectively carried out.

(2) Where an order under this section provides for the transfer of property or liabilities, that property shall, by virtue of the order, be transferred to and vest in, and those liabilities shall, by virtue of the order, be transferred to and become the liabilities of, the transferee company, and in the case of any property, if the order so directs, freed from any charge which is by virtue of the compromise or arrangement to cease to have effect.

(3) Where an order is made under this section, every company in relation to which the order is made shall cause an office copy thereof to be delivered to the registrar of companies for registration within seven days after the making of the order, and if default is made in complying with this subsection, the company and every officer of the company who is in default shall be liable to a default fine.

(4) In this section the expression "property" includes property, rights and powers of every description, and the expression "liabilities" includes duties.

(5) Notwithstanding the provisions of subsection (6) of Section 206 of this Act, the expression "company" in this section does not include any company other than a company within the meaning of this Act.

As appears from Sub-sect. (1) (e) the Court may make

provision for the method and the period within which members must give notice of dissent.

Sect. 209 also deals with dissentients.

209. (1) Where a scheme or contract involving the transfer of shares or any class of shares in a company (in this section referred to as "the transferor company") to another company, whether a company within the meaning of this Act or not (in this section referred to as "the transferee company"), has, within four months after the making of the offer in that behalf by the transferee company been approved by the holders of not less than nine tenths in value of the shares whose transfer is involved (other than shares already held at the date of the offer by, or by a nominee for, the transferee company or its subsidiary), the transferee company may, at any time within two months after the expiration of the said four months, give notice in the prescribed manner to any dissenting shareholder that it desires to acquire his shares, and when such a notice is given the transferee company shall, unless on an application made by the dissenting shareholder within one month from the date on which the notice was given the court thinks fit to order otherwise, be entitled and bound to acquire those shares on the terms on which, under the scheme or contract, the shares of the approving shareholders are to be transferred to the transferee company:

Provided that where shares in the transferor company of the same class or classes as the shares whose transfer is involved are already held as aforesaid to a value greater than one tenth of the aggregate of their value and that of the shares (other than those already held as aforesaid) whose transfer is involved, the foregoing provisions of this subsection shall not apply unless—

(a) the transferee company offers the same terms to all holders of the shares (other than those already held as aforesaid) whose transfer is involved, or, where those shares include shares of different classes, of each class of them; and

(b) the holders who approve the scheme or contract, besides holding not less than nine tenths in value of the shares (other than those already held as aforesaid) whose transfer is involved, are not less than three fourths in number of the holders of those shares.

(2) Where, in pursuance of any such scheme or contract as aforesaid, shares in a company are transferred to another company or its nominee, and those shares together with any other shares in the first-mentioned company held by, or by a nominee for, the transferee company or its subsidiary at the date of the transfer comprise or include nine tenths in value of the shares in the first-mentioned company or of any class of those shares, then—

(a) the transferee company shall within one month from the date of the transfer (unless on a previous transfer in pursuance of the scheme or contract it has already complied with this requirement) give notice of that fact in the prescribed manner to the holders of the remaining shares or of the remaining shares of that class, as the case may be, who have not assented to the scheme or contract; and

(b) any such holder may within three months from the giving of the notice to him require the transferee company to acquire the shares in question;

and where a shareholder gives notice under paragraph (b) of this subsection with respect to any shares, the transferee company shall be entitled and bound to acquire those shares on the terms on which under the scheme or contract the shares of the approving shareholders were transferred to it, or on such other terms as may be agreed or as the court on the application of either the transferee company or the shareholder thinks fit to order.

(3) Where a notice has been given by the transferee company under subsection (1) of this section and the court has not, on an application made by the dissenting shareholder, ordered to the contrary, the transferee company shall, on the expiration of one month from the date on which the notice has been given, or, if an application to the court by the dissenting shareholder is then pending, after that application has been disposed of, transmit a copy of the notice to the transferor company together with an instrument of transfer executed on behalf of the shareholder by any person appointed by the transferee company and on its own behalf by the transferee company, and pay or transfer to the transferor company the amount or other consideration representing the price payable by the transferee company for the shares which by virtue of this section that company is entitled to acquire, and the transferor company shall thereupon register the transferee company as the holder of those shares:

Provided that an instrument of transfer shall not be required for any share for which a share warrant is for the time being outstanding.

(4) Any sums received by the transferor company under this section shall be paid into a separate bank account, and any such sums and any other consideration so received shall be held by that company on trust for the several persons entitled to the shares in respect of which the said sums or other consideration were respectively received.

(5) In this section the expression "dissenting shareholder" includes a shareholder who has not assented to the scheme or contract and any shareholder who has failed or refused to transfer his shares to the transferee company in accordance with the scheme or contract.

PROCEDURE. Company A offers to purchase the issued shares of Company B and 90 per cent¹ of the shareholders accept the offer within four months. At any time within two months after that date Company A can call upon the dissenting shareholders of Company B to transfer their interests. A dissentient may appeal to the Court. Unless the Court orders otherwise, Company A is entitled to acquire the dissentient's shares.

Section 306

The section provides—

306. (1) Any arrangement entered into between a company about to be, or in the course of being, wound up and its creditors shall, subject to the right of appeal under this section, be binding on the company if sanctioned by an extraordinary resolution and on the creditors if acceded to by three fourths in number and value of the creditors.

(2) Any creditor or contributory may, within three weeks from the completion of the arrangement, appeal to the court against it, and the court may thereupon, as it thinks just, amend, vary, or confirm the arrangement.

PROCEDURE. (1) The company must pass an extraordinary resolution sanctioning the arrangement.

(2) The creditors to the extent of three-fourths in number and value must assent, their assents being obtained either at a meeting or by their signatures to a document setting out the terms of the arrangement.

(3) Subject to a right of appeal within three weeks the creditors are bound (*re Contal Radio*, 1932, 2 Ch. 66).

Sect. 306 is available only if the company is about to be or in course of being wound up voluntarily.

Creditors and Contributories (Voluntary Liquidation)

The following provisions of Sect. 278 should be noted—

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,

¹ If Company A already holds, say 20 per cent of the shares, Sect. 209 will still be available and apply to the outstanding 80 per cent.

on the occurrence of which the articles provide that the company is to be dissolved, and the company in general meeting has passed a resolution requiring the company to be wound up voluntarily ;

(b) if the company resolves by special resolution that the company be wound up voluntarily :

(c) if the company resolves by extraordinary resolution to the effect that it cannot by reason of its liabilities continue its business, and that it is advisable to wind up.

(2) In this Act the expression " a resolution for voluntary winding up " means a resolution passed under any of the provisions of subsection (1) of this section.

284. The provisions contained in the seven sections of this Act next following shall, subject to the provisions of the last of them, apply in relation to a members' voluntary winding up.

285. (1) The company in general meeting shall appoint one or more liquidators for the purpose of winding up the affairs and distributing the assets of the company, and may fix the remuneration to be paid to him or them.

(2) On the appointment of a liquidator all the powers of the directors shall cease, except so far as the company in general meeting or the liquidator sanctions the continuance thereof.

286. (1) If a vacancy occurs by death, resignation or otherwise in the office of liquidator appointed by the company, the company in general meeting may, subject to any arrangement with its creditors, fill the vacancy.

(2) For that purpose a general meeting may be convened by any contributory or, if there were more liquidators than one, by the continuing liquidators.

(3) The meeting shall be held in manner provided by this Act or by the articles, or in such manner as may, on application by any contributory or by the continuing liquidators, be determined by the court.

287. (1) Where a company is proposed to be, or is in course of being, wound up altogether voluntarily, and the whole or part of its business or property is proposed to be transferred or sold to another company, whether a company within the meaning of this Act or not (in this section called " the transferee company "), the liquidator of the first-mentioned company (in this section called " the transferor company ") may, with the sanction of a special resolution of that company, conferring either a general authority on the liquidator or an authority in respect of any particular arrangement, receive, in compensation or part compensation for the transfer or sale, shares, policies or other like interests in the transferee company for distribution among the members of the transferor company, or may enter into any other arrangement whereby the members of the transferor company may, in lieu of receiving cash, shares, policies or other like interests, or in addition thereto,

participate in the profits of or receive any other benefit from the transferee company.

(2) Any sale or arrangement in pursuance of this section shall be binding on the members of the transferor company.

(3) If any member of the transferor company who did not vote in favour of the special resolution expresses his dissent therefrom in writing addressed to the liquidator, and left at the registered office of the company within seven days after the passing of the resolution, he may require the liquidator either to abstain from carrying the resolution into effect or to purchase his interest at a price to be determined by agreement or by arbitration in manner provided by this section.

(4) If the liquidator elects to purchase the member's interest, the purchase money must be paid before the company is dissolved and be raised by the liquidator in such manner as may be determined by special resolution.

(5) A special resolution shall not be invalid for the purposes of this section by reason that it is passed before or concurrently with a resolution for voluntary winding up or for appointing liquidators, but, if an order is made within a year for winding up the company by or subject to the supervision of the court, the special resolution shall not be valid unless sanctioned by the court.

(6) For the purposes of an arbitration under this section, the provisions of the Companies Clauses Consolidation Act, 1845, or, in the case of a winding up in Scotland, the Companies Clauses Consolidation (Scotland) Act, 1845, with respect to the settlement of disputes by arbitration, shall be incorporated with this Act, and in the construction of those provisions this Act shall be deemed to be the special Act and "the company" shall mean the transferor company, and any appointment by the said incorporated provisions directed to be made under the hand of the secretary or any two of the directors may be made under the hand of the liquidator; or, if there is more than one liquidator, then of any two or more of the liquidators.

288. (1) If, in the case of a winding up commenced after the commencement of this Act, the liquidator is at any time of opinion that the company will not be able to pay its debts in full within the period stated in the declaration under section two hundred and eighty-three of this Act he shall forthwith summon a meeting of the creditors, and shall lay before the meeting a statement of the assets and liabilities of the company.

(2) If the liquidator fails to comply with this section, he shall be liable to a fine not exceeding fifty pounds.

289. (1) Subject to the provisions of section two hundred and ninety-one of this Act, in the event of the winding up

continuing for more than one year, the liquidator shall summon a general meeting of the company at the end of the first year from the commencement of the winding up, and of each succeeding year, or at the first convenient date within three months from the end of the year or such longer period as the Board of Trade may allow, and shall lay before the meeting an account of his acts and dealings and of the conduct of the winding up during the preceding year.

(2) If the liquidator fails to comply with this section, he shall be liable to a fine not exceeding ten pounds.

290. (1) Subject to the provisions of the next following section, as soon as the affairs of the company are fully wound up, the liquidator shall make up an account of the winding up, showing how the winding up has been conducted and the property of the company has been disposed of, and thereupon shall call a general meeting of the company for the purpose of laying before it the account, and giving any explanation thereof.

(2) The meeting shall be called by advertisement in the *Gazette*, specifying the time, place and object thereof, and published one month at least before the meeting.

(3) Within one week after the meeting, the liquidator shall send to the registrar of companies a copy of the account, and shall make a return to him of the holding of the meeting and of its date, and if the copy is not sent or the return is not made in accordance with this subsection the liquidator shall be liable to a fine not exceeding five pounds for every day during which the default continues:

Provided that, if a quorum is not present at the meeting, the liquidator shall, in lieu of the return hereinbefore mentioned, make a return that the meeting was duly summoned and that no quorum was present thereat, and upon such a return being made the provisions of this subsection as to the making of the return shall be deemed to have been complied with.

(4) The registrar on receiving the account and either of the returns hereinbefore mentioned shall forthwith register them, and on the expiration of three months from the registration of the return the company shall be deemed to be dissolved:

Provided that the court may, on the application of the liquidator or of any other person who appears to the court to be interested, make an order deferring the date at which the dissolution of the company is to take effect for such time as the court thinks fit.

(5) It shall be the duty of the person on whose application an order of the court under this section is made, within seven days after the making of the order, to deliver to the registrar an office copy of the order for registration, and if that

person fails so to do he shall be liable to a fine not exceeding five pounds for every day during which the default continues.

(6) If the liquidator fails to call a general meeting of the company as required by this section, he shall be liable to a fine not exceeding fifty pounds.

291. Where Sect. 288 of this Act has effect, Sects. 299 and 300 thereof shall apply to the winding up to the exclusion of the two last foregoing sections, as if the winding up were a creditors' voluntary winding up and not a members' voluntary winding up:

Provided that the liquidator shall not be required to summon a meeting of creditors under the said section 299 at the end of the first year from the commencement of the winding up, unless the meeting held under the said section 288 is held more than three months before the end of that year.

A members' winding up is available only if the company is solvent and a statutory declaration of solvency has been made by the directors in compliance with Sect. 283, which provides—

283. (1) Where it is proposed to wind up a company voluntarily, the directors of the company or, in the case of a company having more than two directors, the majority of the directors, may, at a meeting of the directors make a statutory declaration to the effect that they have made a full inquiry into the affairs of the company, and that, having so done, they have formed the opinion that the company will be able to pay its debts in full within such period not exceeding twelve months from the commencement of the winding up as may be specified in the declaration.

(2) A declaration made as aforesaid shall have no effect for the purposes of this Act unless—

(a) it is made within the five weeks immediately preceding the date of the passing of the resolution for winding up the company and is delivered to the registrar of companies for registration before that date; and

(b) it embodies a statement of the company's assets and liabilities as at the latest practicable date before the making of the declaration.

(3) Any director of a company making a declaration under this section without having reasonable grounds for the opinion that the company will be able to pay its debts in full within the period specified in the declaration, shall be liable to imprisonment for a period not exceeding six months or to a fine not exceeding five hundred pounds or to both; and if the company is wound up in pursuance of a resolution passed within the period of five weeks after the making of the declaration, but its debts are not paid or provided for in full within the

period stated in the declaration, it shall be presumed until the contrary is shown that the director did not have reasonable grounds for his opinion.

(3) A winding up in the case of which a declaration has been made and delivered in accordance with this section or section 230 of the Companies Act, 1929, is in this Act referred to as "a members' voluntary winding up," and a winding up in the case of which a declaration has not been made and delivered as aforesaid is in this Act referred to as "a creditors' voluntary winding up."

A solvent company may thus resolve to wind up voluntarily and distribute its assets.

PROCEDURE. (1) Directors' statutory declaration of solvency to be made.

(2) Register declaration with registrar of companies.

(3) Pass a resolution (Sect. 278) for voluntary liquidation.

(4) Appoint a liquidator.

(5) If liquidation continues for more than a year, liquidator may have to call a general meeting of the company (Sect. 289).

(6) Liquidator calls a final meeting of the company (by advertisement in the *Gazette*).

A solvent company may resolve to wind up voluntarily for purpose of reconstruction, e.g. by selling assets to another company in exchange for shares, etc., of the latter company.

PROCEDURE. (1) Directors' statutory declaration of solvency to be made.

(2) Register declaration with registrar of companies.

(3) Pass a resolution (Sect. 278) for voluntary liquidation.

(4) Appoint a liquidator.

(5) Company must pass a special resolution authorizing liquidator to sell. This resolution may be passed before or concurrently with the resolution for voluntary winding up or for appointing liquidators.

(6) If liquidation continues for more than a year, liquidator must call a general meeting of the company (Sect. 289).

(7) Liquidator calls a final meeting of the company (by advertisement in the *Gazette*).

Creditors' Winding Up. In the case of a creditor's winding up, the matter is in the hands of the creditors.

PROVISIONS APPLICABLE TO A CREDITORS' VOLUNTARY WINDING UP

292. The provisions contained in the eight sections of this Act next following shall apply in relation to a creditors' voluntary winding up.

293. (1) The company shall cause a meeting of the creditors of the company to be summoned for the day, or the day next following the day, on which there is to be held the meeting at which the resolution for voluntary winding up is to be proposed, and shall cause the notices of the said meeting of creditors to be sent by post to the creditors simultaneously with the sending of the notices of the said meeting of the company.

(2) The company shall cause notice of the meeting of the creditors to be advertised once in the *Gazette* and once at least in two local newspapers circulating in the district where the registered office or principal place of business of the company is situate.

(3) The directors of the company shall—

(a) cause a full statement of the position of the company's affairs together with a list of the creditors of the company and the estimated amount of their claims to be laid before the meeting of creditors to be held as aforesaid; and

(b) appoint one of their number to preside at the said meeting.

(4) It shall be the duty of the director appointed to preside at the meeting of creditors to attend the meeting and preside thereat.

(5) If the meeting of the company at which the resolution for voluntary winding up is to be proposed is adjourned and the resolution is passed at an adjourned meeting, any resolution passed at the meeting of the creditors held in pursuance of subsection (1) of this section shall have effect as if it had been passed immediately after the passing of the resolution for winding up the company.

(6) If default is made—

(a) by the company in complying with subsections (1) and (2) of this section;

(b) by the directors of the company in complying with subsection (3) of this section ;

(c) by any director of the company in complying with subsection (4) of this section ;

the company, directors or director, as the case may be, shall be liable to a fine not exceeding one hundred pounds, and, in the case of default by the company, every officer of the company who is in default shall be liable to the like penalty.

294. The creditors and the company at their respective meetings mentioned in the last foregoing section may nominate a person to be liquidator for the purpose of winding up the affairs and distributing the assets of the company, and if the creditors and the company nominate different persons, the person nominated by the creditors shall be liquidator, and if no person is nominated by the creditors the person, if any, nominated by the company shall be liquidator :

Provided that in the case of different persons being nominated, any director, member or creditor of the company may, within seven days after the date on which the nomination was made by the creditors, apply to the court for an order either directing that the person nominated as liquidator by the company shall be liquidator instead of or jointly with the person nominated by the creditors or appointing some other person to be liquidator instead of the person appointed by the creditors.

295. (1) The creditors at the meeting to be held in pursuance of section two hundred and ninety-three of this Act or at any subsequent meeting may, if they think fit, appoint a committee of inspection consisting of not more than five persons, and if such a committee is appointed the company may, either at the meeting at which the resolution for voluntary winding up is passed or at any time subsequently in general meeting, appoint such number of persons as they think fit to act as members of the committee not exceeding five in number :

Provided that the creditors may, if they think fit, resolve that all or any of the persons so appointed by the company ought not to be members of the committee of inspection, and, if the creditors so resolve, the persons mentioned in the resolution shall not, unless the court otherwise directs, be qualified to act as members of the committee, and on any application to the court under this provision the court may, if it thinks fit, appoint other persons to act as such members in place of the persons mentioned in the resolution.

(2) Subject to the provisions of this section and to general rules, the provisions of sections 253 (except subsection (1)) and 255 of this Act shall apply with respect to a committee of inspection appointed under this section as they apply with respect to a committee of inspection appointed in a winding up by the court.

296. (1) The committee of inspection, or if there is no such committee, the creditors, may fix the remuneration to be paid to the liquidator or liquidators.

(2) On the appointment of a liquidator, all the powers of the directors shall cease, except so far as the committee of inspection, or if there is no such committee, the creditors, sanction the continuance thereof.

297. If a vacancy occurs, by death, resignation or otherwise, in the office of a liquidator, other than a liquidator appointed by, or by the direction of, the court, the creditors may fill the vacancy.

298. The provisions of section two hundred and eighty-seven of this Act shall apply in the case of a creditors' voluntary winding up as in the case of a members' voluntary winding up, with the modification that the powers of the liquidator under the said section shall not be exercised except with the sanction either of the court or of the committee of inspection.

299. (1) In the event of the winding up continuing for more than one year, the liquidator shall summon a general meeting of the company and a meeting of creditors at the end of the first year from the commencement of the winding up, and of each succeeding year, or at the first convenient date within three months from the end of the year or such longer period as the Board of Trade may allow, and shall lay before the meetings an account of his acts and dealings and of the conduct of the winding up during the preceding year.

(2) If the liquidator fails to comply with this section, he shall be liable to a fine not exceeding ten pounds.

300. (1) As soon as the affairs of the company are fully wound up, the liquidator shall make up an account of the winding up, showing how the winding up has been conducted and the property of the company has been disposed of, and thereupon shall call a general meeting of the company and a meeting of the creditors for the purpose of laying the account before the meetings and giving any explanation thereof.

(2) Each such meeting shall be called by advertisement in the *Gazette* specifying the time, place and object thereof, and published one month at least before the meeting.

(3) Within one week after the date of the meetings, or, if the meetings are not held on the same date, after the date of the later meeting, the liquidator shall send to the registrar of companies a copy of the account, and shall make a return to him of the holding of the meetings and of their dates, and if the copy is not sent or the return is not made in accordance with this subsection the liquidator shall be liable to a fine not exceeding five pounds for every day during which the default continues:

Provided that, if a quorum is not present at either such meeting, the liquidator shall, in lieu of the return hereinbefore

mentioned, make a return that the meeting was duly summoned and that no quorum was present thereat and upon such a return being made the provisions of this subsection as to the making of the return shall, in respect of that meeting, be deemed to have been complied with.

(4) The registrar on receiving the account and, in respect of each such meeting, either of the returns hereinbefore mentioned, shall forthwith register them, and on the expiration of three months from the registration thereof the company shall be deemed to be dissolved :

Provided that the court may, on the application of the liquidator or of any other person who appears to the court to be interested, make an order deferring the date at which the dissolution of the company is to take effect for such time as the court thinks fit.

(5) It shall be the duty of the person on whose application an order of the court under this section is made, within seven days after the making of the order, to deliver to the registrar an office copy of the order for registration, and if that person fails so to do he shall be liable to a fine not exceeding five pounds for every day during which the default continues.

(6) If the liquidator fails to call a general meeting of the company or a meeting of the creditors as required by this section, he shall be liable to a fine not exceeding fifty pounds.

Vacancy by Death or Resignation of Liquidator

(a) *Members' Winding Up.* See Sect. 286, page 119.

(b) *Creditors' Winding Up.* See Sect. 297, page 126.

The following provisions apply to every voluntary winding up—

303. (1) The liquidator may—

(a) in the case of a members' voluntary winding up, with the sanction of an extraordinary resolution of the company, and, in the case of a creditors' voluntary winding up, with the sanction of the court or the committee of inspection or (if there is no such committee) a meeting of the creditors, exercise any of the powers given by paragraphs (d), (e) and (f) of subsection (1) of section 245 of this Act to a liquidator in a winding up by the court ;

(b) without sanction, exercise any of the other powers by this Act given to the liquidator in a winding up by the court ;

(c) exercise the power of the court under this Act of settling a list of contributories, and the list of contributories shall be prima facie evidence of the liability of the persons named therein to be contributories ;

(d) exercise the power of the court of making calls ;

(e) summon general meetings of the company for the purpose of obtaining the sanction of the company by special or extraordinary resolution or for any other purpose he may think fit.

Winding Up Subject to Supervision

A company which has passed an ordinary, extraordinary or special resolution for voluntary winding up may be ordered by the Court to be wound up subject to supervision. (Sections 311-315).

Powers of Liquidator

One additional liquidator may be appointed.

314. (1) Where an order is made for a winding up subject to supervision, the court may by that or any subsequent order appoint an additional liquidator.

(2) A liquidator appointed by the court under this section shall have the same powers, be subject to the same obligations, and in all respects stand in the same position, as if he had been duly appointed in accordance with the provisions of this Act with respect to the appointment of liquidators in a voluntary winding up.

(3) The court may remove any liquidator so appointed by the court or any liquidator continued under the supervision order and fill any vacancy occasioned by the removal, or by death or resignation.

Consequently, he has full power to convene meetings without the sanction of the Court.

Compulsory Liquidation

Sect. 222 provides that a company may be wound up by the Court if the company has passed a special resolution to that effect. The section reads thus—

222. A company may be wound up by the court if—

(a) the company has by special resolution resolved that the company be wound up by the court;

(b) default is made in delivering the statutory report to the registrar or in holding the statutory meeting;

(c) the company does not commence its business within a year from its incorporation or suspends its business for a whole year;

(d) the number of members is reduced, in the case of a private company, below two, or, in the case of any other company, below seven;

(e) the company is unable to pay its debts;

(f) the court is of opinion that it is just and equitable that the company should be wound up.

If the winding up order is made, separate meetings of the creditors and the contributories are convened by the Official Receiver under Sect. 239 (b) and Sect. 252 (1), which provide—

239. (b) the official receiver shall summon separate meetings of the creditors and contributories of the company for the purpose of determining whether or not an application is to be made to the court for appointing a liquidator in the place of the official receiver;

252. (1) When a winding-up order has been made by the court in England, it shall be the business of the separate meetings of creditors and contributories summoned for the purpose of determining whether or not an application should be made to the court for appointing a liquidator in place of the official receiver, to determine further whether or not an application is to be made to the court for the appointment of a committee of inspection to act with the liquidator and who are to be members of the committee if appointed.

PROCEDURE. (1) The official receiver acts as chairman.

(2) Creditors' right of voting is defined in Rules 139 and 141 of the Companies Winding up Rules, 1949.

(3) Votes are given personally or by proxy in the form given in the Appendix to the Rules (Rule 147).

(4) A quorum is constituted by three creditors or contributories, or the whole number if they are less than three (Rule 138).

(5) Minutes must be kept by the chairman (Rule 145).

(6) The chairman may adjourn the meeting with its consent (Rule 137). If there is no quorum within half an hour the meeting must be adjourned for not less than seven or more than twenty-one days (Rule 138) (2).

General Power of Court to Convene Meetings

Sect. 346 provides—

(1) The court may, as to all matters relating to the winding up of a company, have regard to the wishes of the creditors or contributories of the company, as proved to it by any sufficient

evidence, and may, if it thinks fit, for the purpose of ascertaining those wishes, direct meetings of the creditors or contributories to be called, held and conducted in such manner as the court directs, and may appoint a person to act as chairman of any such meeting and to report the result thereof to the court.

(2) In the case of creditors, regard shall be had to the value of each creditor's debt.

(3) In the case of contributories, regard shall be had to the number of votes conferred on each contributory by this Act or the articles.

Accordingly the Court may at any time in a winding up, upon proof of sufficient evidence, direct a meeting of creditors and contributories to be held.

Statutory Companies

The Companies Clauses Acts contain no provision for the winding up of statutory companies, but they may be wound up under Part IX of the Companies Act, 1948, as "unregistered companies."

PART II

PRINCIPLES OF COMMON LAW RELATING TO MEETINGS

CHAPTER XIII

LEGAL DECISIONS AND LEGISLATION

THE common law at one time consisted of a collection of unwritten customs which had subsisted immemorially in this Kingdom (see Stephens' *Commentaries*, Vol. I, 2). The common law of meetings may be defined as customary rules of procedure which have, for the most part, come before the judges and been approved as fair and reasonable.¹

Legal Decisions

It must always have been the rule and custom that two persons at least were necessary to constitute a meeting. Nevertheless it was not until 1876 that this rule or custom was formally recognized by the Court in *Sharp v. Dawes* (1876, 2 Q.B.D. 26). It is clear, said Mellish, L.J., in this case, that according to the ordinary use of the English language a meeting could no more be constituted by one person than a meeting could have been constituted if no shareholders at all had attended. And we may add, not only according to the ordinary use of the language but also according to the common reason and practice of all meetings from the earliest times.

Take again the common law rule that voting is decided in the first instance by show of hands. Clearly that must have been the earliest method of ascertaining the sense of a meeting. There was no such thing as

¹ Cf. *National Dwellings Society v. Sykes* (p. 61 *ante*) and *Wall v. London & Northern Assets Corporation* (p. 63 *ante*).

voting by proxy, and custom knew of no such method of recording votes, especially as writing was a rare accomplishment. And so to-day there is no common law right to vote by proxy.

But the meeting might be a crowded and perhaps a disorderly assembly, and the person presiding might wrongly calculate the votes. Accordingly those dissatisfied claimed and acquired by custom a right to demand a poll. As the Court put it in *Cornwall v. Woods* (1846, 4 Notes of Cases 555)—

In order to protect those who may be affected by the declaration of the chairman, the law has pointed out—or rather the general practice and custom of the country has provided—a mode by which his error is to be corrected. In the first place, the majority as declared by the chairman is, *prima facie*, evidence of the fact. Then what is to be done? If the other party is dissatisfied, they may call for a second show of hands, and if that is unsatisfactory, for a division, one party going to the right hand and the other to the left, or, as in the House of Commons, one party remaining in the House and the other going into the lobby. There is still another mode, which is by poll.

A vote by show of hands followed, if necessary, by a division or a poll is thus the recognized common law method of ascertaining the sense of the meeting.

The powers and duties of the chairman may in particular be referred to in this connection. Meetings had to be regulated somehow, and where a number of persons assembled and put a man in the chair, they devolved upon him by agreement the conduct of that meeting. "They *attorn* to him, as it were, and give him the whole power of regulating themselves individually." In these terms Jarvis, L.C.J., explained the common rule and custom governing the relationship of chairman and those present at the meeting.

But they do not, in so vesting him with authority, give him any additional right to vote. Hence at common law the chairman has by virtue of his appointment no second or casting vote. No doubt the second vote may have been given him in special circumstances

by the agreement of those present, but there was no usage or custom to that effect.

But the fact that those present have given the chairman the right of regulating themselves individually does not entail a further consequence that the chairman can adjourn the meeting if the meeting does not so wish. It is a matter for the general vote, and not one to be decided by their representative and nominee, the chairman of the meeting. It follows further, that if the chairman leaves the chair before the business is concluded, the authority given him by the meeting *ipso facto* is withdrawn, and another chairman can be appointed.

In *Stoughton v. Reynolds* (1736, Stra. 1045) it was stated that the right to adjourn is in the assembly itself "for the power must arise from the custom or common law. Here is no custom found and I know of no book that shows how it stands at common law." Similarly the electors have a common law right to manage an election in the absence of a presiding officer. (*R. v. Winchester*, 1806, 7 East 573.)

Legislation

Obviously it must happen that a custom or usage, although recognized and approved by the Court, yet requires amendment having regard to modern conditions and requirements. The Court may consider the custom and confirm it as fair and reasonable, but it may go further and draw attention to a need calling for remedial legislation.

Thus the Local Authorities (Admission of the Press to Meetings) Act, 1908, was passed mainly as the result of a decision of the Court of Appeal in *Mayor and Corporation of Tenby v. Mason* (1908, 1 Ch. 457). By virtue of this Act the Press have now the right to attend meetings of local authorities which they had previously to the Act no right to attend, no right, that

is, established by custom or law. And so the Court of Appeal decided, with the result that a defective, inadequate rule of the common law was corrected by legislation.

The Public Meeting Act, 1908, may be cited as another illustration. The chairman of a political meeting, for instance, had power by custom or usage—in a word, by common law—to eject disorderly persons. But advocates of feminine suffrage were undeterred, and ejection was no remedy for the disorderly conduct of some of them, and the resultant breaking up of numerous meetings. The common law was defective in this respect. Hence the aid of the legislature was invoked, and the Public Meeting Act was passed imposing fines or imprisonment upon any person who, at any lawful public meeting, acts or incites another to act in a disorderly manner for the purpose of preventing the transaction of the business for which the meeting was called. “A public meeting is any meeting *bona fide* and lawfully held for a lawful purpose and for the furtherance or discussion of any matter of public concern whether the admission thereto be general or restricted.” (Law of Libel Amendment Act, 1888.) A company meeting does not normally come within this definition, as the business thereof is not of public concern. (*Ponsford v. Financial Times*, 1900, 16 T.L.R. 248.)

CHAPTER XIV

UNLAWFUL AND LAWFUL MEETINGS

THE Common Law permits any number of persons to meet for a lawful purpose. This right to meet together is, therefore, not conferred by special enactment, as in many foreign countries, but is nothing more than a result of the view taken by the Courts as to individual liberty of person and individual liberty of speech.

There is no special law allowing A, B, and C to meet together either in the open air or elsewhere for a lawful purpose, but the right of A to go where he pleases so that he does not commit a trespass, and to say what he likes to B so that his talk is not libellous or seditious, the right of B to do the like, and the existence of the same rights of C, D, E, and F, and so on *ad infinitum*, lead to the consequence that A, B, C, D, and a thousand or ten thousand other persons may, as a general rule, meet together in any place where otherwise they each have a right to be for a lawful purpose and in a lawful manner. (*Dicey's Law of the Constitution*, page 267)

Meetings may be classified as—

(1) Unlawful ;

(2) Lawful—(a) called in pursuance of a legal duty, e.g. by a local authority, and (b) called for purposes not of a public administrative nature, e.g. religious, political, or social meetings.

Private or Public Place

The meeting may be convened to be held in any private place or in a public place. Obviously there is an important distinction, and there is no right to hold a meeting in the street. It is a question of degree.

The right of free speech is to promulgate your opinions by speech so long as you do not utter what is treasonable or libellous, or make yourself obnoxious to the statutes that deal with blasphemy and obscenity. But the right of free speech is a perfectly separate

thing from the question of the place where that right is to be exercised.

In *M'Ara v. Magistrates of Edinburgh*, 1913, S.C., on page 1073, the Lord President observed—

As regards the common law, I wish most distinctly to state it as my opinion that the primary and overruling object for which streets exist is passage. The streets are public, but they are public for passage. . . . What I mean is this: streets are for passage, and passage is paramount to everything else. That does not necessarily mean that anyone is doing an illegal act if he is not at the moment passing along. It is quite clear that citizens may meet in the streets and may stop to speak to each other. The whole thing is a question of degree.

There is thus no general right of meeting in public places, any more than of meeting in a private house. Both meetings may be lawful, but on the other hand, the first may be unlawful because the meeting constitutes a nuisance, and the second unlawful because constituting a trespass.

Police Interference

The duties of the police with regard to the preservation of order at public meetings are as follows—

The Public Meeting Act, 1908 (Appendix III), makes the deliberate interruption of public meetings an offence. The Act gives no additional power and imposes no additional duties on the police. The view taken by the police is that they are not required to take any initiative under the Act, and are not empowered to arrest interrupters. It is not their business to secure a hearing for speakers. It is for the speakers to get on such good terms with their audience that they can secure a hearing for themselves. The police ought not to interfere except to prevent a breach of the peace, and it may, and must often happen, that an act constituting a breach of the peace may not be done within sight of a police officer, or if

done in his sight it may not be in his power to arrest the particular wrongdoer.

This Act does not directly confer any additional powers or impose any additional duties on the police, but it makes the deliberate interruption of public meetings for the first time an offence cognizable by the law. The view generally taken by the chief constables who have given evidence before us is that the police are not bound to take any initiative under the Act. It does not empower them to arrest an interrupter or even to take his name and address. The general view is that the police may properly assist the promoters of a meeting in obtaining the name and address of deliberate interrupters, and ought to give the promoters every opportunity of charging them under the Act. With scarcely any exceptions the chief constables have stated that they would not feel justified in directing the police to prosecute interrupters, but would require the charge sheet to be signed by a promoter or steward of a meeting, who would then become liable to prosecute the parties charged. (*Metropolitan Police Guide*, page 1081.)

The *Metropolitan Police Guide* thus defines, or rather describes, the characteristic features of an unlawful meeting—

A meeting may be unlawful from its nature if it amounts to an affray, or an unlawful assembly, or a riot, or is prohibited by law, or from its being held in a prohibited place, such as one held to threaten Parliament, or without permission in Trafalgar Square, or on a common or in a park when prohibited. (Page 1079.) (See also Appendix IV.)

It should be noted that the law as to preserving order at meetings called in pursuance of a legal duty (such as meetings of public bodies, local authorities, public companies, etc.) is the same as for meetings called by private persons.

As already explained, the difference between a meeting not called for public administrative purposes and a meeting called in pursuance of a legal duty, e.g. by a local authority, is that those present at the latter class of meetings have a legal right to attend; on the other hand, those present at the former class of meetings are there by invitation of the conveners. Accordingly a person present at a meeting called by a local

authority can only be removed for misbehaviour. A person present at a meeting by invitation of the conveners is there by sufferance, and can be requested to withdraw at any time. In the event of refusal the conveners or the stewards can use reasonable force to eject him from the meeting. Money paid on admission cannot be demanded, although in such circumstances the aggrieved party can take civil proceedings, and sue for breach of contract.

Unlawful Meetings

A meeting may be unlawful, obviously, if convened for an unlawful object, e.g. to commit a breach of the peace. But the object may be lawful and the meeting unlawful if in fact it disturbs the peace or engenders in people apprehensions of a breach of the peace.

A meeting which, though perhaps not in strictness an unlawful assembly, does from some illegality in its object or in the conduct of its members, cause a breach of the peace by persons opposed to the meeting, may thereby become an unlawful assembly, and a meeting which, though in every way perfectly lawful, if it in fact causes a breach of the peace on the part of wrongdoers who dislike the meeting may, *if the peace can be restored by no other means*, be required by the magistrates and other persons in authority to break up, and on the members of the meeting refusing to disperse, becomes an unlawful assembly.

All persons assembled to sow sedition and bring into contempt the constitution, are in an unlawful assembly: all persons assembled, in furtherance of this object, are unlawfully assembled too.

If, from the general appearance, and all its accompanying circumstances, it is calculated to excite terror, alarm, and consternation, it is generally criminal and unlawful. (*Reg. v. Vincent*, 9 C. & P. 91)

Dispersal by Force

An unlawful assembly can be dispersed, if necessary, by force, and by the common law every citizen is bound to aid in the dispersal of a riotous assembly. If the assembly degenerates into a riot in which twelve

or more persons are involved, the Riot Act may be read by a magistrate, with the following results—

(1) If the rioters do not disperse within one hour they are guilty of felony.

(2) They may be arrested in consequence.

(3) Order may be given to fire upon the rioters.

The common law empowers a magistrate to disperse an unlawful assembly. This common law right is fortified by the provisions of the Riot Act.

If a lawful assembly is dispersed by force, i.e. by the forcible interference of persons who object to the meeting, civil or criminal proceedings can be taken by any individual assaulted against the person who commits the assault.

Military Interference

In 1893 soldiers in defence of Ackton Colliery were attacked and surrounded by a mob. The Riot Act was read, but before an hour had elapsed orders were given to fire. Two persons, not rioters, were killed. A committee was appointed to investigate and report (C 7234). The following is an extract from the report—

Officers and soldiers are under no special privileges and subject to no special responsibility as regards this principle of law. A soldier for the purpose of establishing civil order is only a citizen armed in a particular manner. He cannot because he is a soldier excuse himself if without necessity he takes human life. The duty of magistrates and peace officers to summon or to abstain from summoning the assistance of the military depends in like manner on the necessities of the case. A soldier can only act by using his arms. The weapons he carries are deadly. They cannot be employed at all without danger to life and limb, and in these days of improved rifles and perfected ammunition, without some risk of injuring distant and possibly innocent bystanders. . . . But when the call for help is made, and a necessity for assistance from the military has arisen, to refuse such assistance is a misdemeanour.

It will be observed that in this case the statutory period, viz., one hour, as required by the Riot Act

had not expired before the order to fire was given. It followed that the captain in charge and his men could not claim statutory protection. Accordingly their liabilities remained under the common law. The questions were: (1) Was what they did necessary, and no more than was necessary, to put a stop to or prevent crime? (2) Did they exercise ordinary skill and caution so as to do no more harm than could reasonably be avoided? If these conditions were complied with there could be no legal liability. The committee came to the conclusion that the action of the troops was justified in law.

Lawful Meetings

As already stated, lawful meetings may be either (a) called in pursuance of a legal duty, or (b) called for a private purpose.

Meetings under class (a) would include those held by statutory and registered companies, County Councils, Borough Councils, District Councils, Parish Councils, etc. These bodies have public or statutory duties to perform.

Meetings under class (b) would include those held for religious, political, or social purposes.

Meetings in this category stand on a different footing, and widely different rules of law and procedure apply. Thus members of a local authority have a legal right to be present at the meetings which must be held, and notice must be given in accordance with statutory provision. Such meetings are, moreover, privileged occasions, and a member using defamatory language but acting *bona fide* and without malice in the discharge of his legal duty is protected.

On the other hand, a political meeting is convened by no particular form of notice—usually by circular, poster, or advertisement—and those present are under no legal duty to attend. Hence defamatory statements

made are not privileged, and the user is liable to civil proceedings, and the same applies to religious or social meetings. Again, as already stated, the liability to expulsion necessarily varies. A member present at a meeting of a local authority, having a legal right to attend, can only be removed for misbehaviour. A person present at a political, religious, or social gathering is present by invitation, and has no legal right to attend. The conveners or promoters of the meeting can request him to withdraw at any time. He is there on sufferance, by the licence of the conveners, and this licence may be withdrawn at any time. If money has been paid for admission it cannot be demanded by the offender, who must comply with the order to withdraw (which may be enforced by reasonable force) without prejudice to his right to sue for breach of contract.

CHAPTER XV

NOTICES OF MEETINGS—THE QUORUM

NOTICE should be given to all those entitled to attend in the case of a body invested with public duties. Thus in *Rex v. Hill* (1825, 4 Barn. and Cres. 426) the Court observed—

Where the election of burgesses is fixed, either by charter or custom, to take place on a specific day, there it is the duty of every person entitled to vote to take notice that there is to be an election on that day. But when no specific day is fixed and the election may take place at a meeting holden at any time, it is essential that notice of the meeting and of the business to be transacted there should be given to all persons resident within the limits of the borough, who are entitled to vote, and that that should be a reasonable notice and at a reasonable time before the election actually takes place.

And in *Smyth v. Darley* (1849, 2 H.L.C. 789) it was held that where certain acts of a corporation are to be performed at a special meeting of the members of that corporation, all the persons entitled to be present must be summoned, if they are within a reasonable distance. Further, the omission to summon anyone so entitled renders the acts done at the meeting, in his absence, invalid.

Political, religious, or social meetings necessarily stand in a different category, both as regards the method of giving and as to the consequences of any failure to give notice. But where there is any right to attend, proper notice must be given.

In the case of a committee consisting of the vicar, curate, and churchwardens, notice had not been given to one of the churchwardens. It was held that the absence of notice was a fatal objection.

Mr. Stedman had no notice of what was being done. It is said that a notice was put up on the door of the church ; but it is not suggested that Mr. Stedman saw it or knew anything

about it. Mr. Stedman ought to have had a notice that this meeting was about to be held, and, having regard to what was proposed [the dismissal of a schoolmaster], stating what the object of the meeting was or, at any rate, that this was one of the objects of the meeting. (*Lane v. Norman*, 1891, 66 L.T. 85.)

The question is whether the allegation that the defendants were duly assembled as a select vestry has been made out. As they were assembled not on the general day of meeting, but on a particular day and for a special purpose, they should have proved the notice without which they could not be assembled as a vestry. The sort of notice is not material: but some notice should have been shown, and it is admitted that one of them received none. (*Dobson v. Fussy*, 1831, 7 Bing. 305.)

The election being by a definite body on a day of which, till summons, the electors had no notice they were all entitled to be specially summoned, and if there was any omission to summon any of them, unless they all happened to be present or unless those summoned were beyond summoning distance—as, for instance, abroad—there could not be a good electoral assembly and even a unanimous election by those who did attend would be void. (*Smyth v. Darley*, 1849, 2 H.L.C. 789.)

Perhaps if a member were at such a distance that it would be absolutely impossible for him to attend, then the secretary might be excused from sending a notice to him and the meeting would be properly convened. Possibly the same exception might hold good when a member was so dangerously ill that he could not be moved. (*Young v. Ladies' Imperial Club*, 1920, 36 T.L.R. 392.)

The notice must be sufficient. In *Smith v. Deighton and Billington* (1852, 8 Moore P.C. 187) the question was whether sufficient notice had been given to parishioners of the special purpose, the making of a rate, for which the meeting was called.

As to the second part of the resolution—the making of a rate for the general expenses of the parish—we are all clearly of opinion that the notice was wholly insufficient for the purpose and that the provisions of the statute have not been complied with.

The notice must be frank and explicit. The Court does not scrutinize these notices with a view to exercising criticism, or to finding out defects, but it looks at them fairly. The test applied is: What is the meaning which the notice would fairly carry to ordinary minds?

The notice must comply with standing orders, statutory rules, and regulations.

Further points to be noted are—

(1) The expression "clear days" means exclusive of the day the notice is served, and of the day on which the meeting is held. Sunday would be included in computing the interval. (*R. v. Shropshire Justices*, 1838, 8 A. & E. 173.)

(2) Notice of an adjourned meeting is not necessary. The adjournment is a continuation or prolongation of the original meeting, but in the absence of notice only business left over can be transacted.

I hold it to be quite clear that upon general principles an adjournment, where there is power of adjournment, if *bona fide*, is only a continuation of the meeting: the moment you admit identity of meeting no more is to be said, and the notice that was given for the first meeting holds good for and includes all the other meetings following upon it. (*Kerr v. Wilkie*, 1860, 1 L.T. 501; *Scadding v. Lorant*, 1851, 3 H.L.C. 418.)

It may be added that a meeting once convened cannot be postponed. It should be held and if a quorum is present formally adjourned. (*Smith v. Paranga Mines & Co.*, 1906, 2 Ch 193)

Religious, political, or social meetings, which the conveners are under no legal obligation to call, obviously are not subject to this rule.

The Quorum

The rule of common law, as we have seen, was established by *Sharp v. Dawes*, and is that (subject to the exceptional cases mentioned below) two persons at least must be present to form a quorum. Standing orders or other regulations may specially define a minimum number exceeding two to form a quorum, but in the absence of such provisions, the common law rule applies, and one person cannot form a quorum, because one person cannot constitute a meeting.

If no quorum is fixed, a majority can act at a meeting

called by a corporation or other body charged with administrative duties. "I know of no rule of law preventing the majority of a body from binding the minority" (per Brett, L.J., in *York Tramways Co. v. Willows*, 1882, 8 Q.B.D. 685.)

It cannot be disputed that wherever a certain number of persons are incorporated, a major part of them may do any corporate act; so, if all be summoned, and part appear, a major part of those that appear may do a corporate act, though nothing be mentioned in the charter of the major part. (*Attorney-General v. Davy*, 1745, 2 Atk. 212.)

Referring to the classification of meetings (p. 135), the second class of lawful meetings are those called for purposes not of a public administrative nature. Religious, political, or social gatherings are included in this category. There is no fixed quorum, and accordingly those present (two or more) constitute the meeting. The same principle necessarily applies, and the "major part of those that appear" can pass any resolution. Committees stand in a different position. If a committee is appointed without provision of a quorum, all must attend.

Exceptional Cases

In the case of a committee it is commonly provided that one may constitute a valid meeting (*re Taurine Co.*, 1884, 25 Ch.D. 118), and where a class meeting of shareholders is held and the shares of the class, e.g. preference shares, are held by one person, a resolution signed by that person is a resolution of a meeting of the class. (*East v. Bennett Bros.*, 1911, 1 Ch. 163.)

Table A of the Companies Act, 1948, provides in Clause 106, that a resolution in writing, signed by all the directors of a registered company who are entitled to receive notice of a board meeting, shall be valid.

CHAPTER XVI

THE CHAIRMAN: POWERS AND DUTIES

IT is necessary for some person to preside over the meeting. The chairman, as has been said, collects his authority from the meeting. He may have a statutory or legal right to take the chair or, as in the case, for instance, of a religious, political, or social meeting, those present will appoint a chairman. The motion "That Mr.—— take the chair" will usually be seconded before being submitted to the meeting. But there is no common law rule requiring any seconder (*re Horbury Bridge Co.*, 1879, 11 Ch.D. 109.) And any irregularity in nominating would be cured by acquiescence. If his proposed appointment is contested, a chairman (*pro tem.*) other than a candidate should be appointed.

"Upon the maxim that no man shall be judge in his own cause, I am of opinion that a returning officer cannot be allowed, in the election at which he presides, to return himself." (Lord Campbell, L.C.T., in *Reg. v. Owens*, 1858, 28 L.J.Q.B. 316.)

This is the general principle of common law. In the case of a contested election for the post of chairman, the names of the candidates should be submitted to the vote in alphabetical order, and not in the order their names were mentioned by their supporters.

Points to be Noted

- (1) No poll can be taken on the motion ;
- (2) the meeting cannot be adjourned pending the election ;
- (3) dilatory motions such as "the previous question" must be ruled out of order ;
- (4) objections to the appointment must be taken at once. (*Cornwall v. Woods*, 1846. 4 Notes of Cases, 555).

Mr. Bluck took the chair, and the meeting acquiesced, and adopted him as chairman. In that capacity he was bound to declare, according to his means of knowledge, the sense of the meeting: that is the duty of the chairman. (Per Sir H. Jenner Fust, in *Cornwall v. Woods*, ante.)

It is on him that it devolves, both to preserve order in the meeting, and to regulate the proceedings so as to give all persons entitled a reasonable opportunity of voting. He is to do the acts necessary for these purposes on his own responsibility, and subject to the being called upon to answer for his conduct if he has done anything improperly. (*Reg. v. D'Oyly*, 1840, 12 A. & E. 139.)

In the case cited there was an irregularity in nominating the chairman who, in fact, was nominated and seconded. But it was held that any defect of appointment was cured by the acquiescence of the meeting.

Duties and Powers

It is the duty of the chairman and his function to preserve order, and to take care that the proceedings are conducted in a proper manner, and that the sense of the meeting is properly ascertained with regard to any question which is properly before the meeting. (Per Chitty, J., in *re National Dwellings Society v. Sykes*, 1894, 3 Ch. 159.)

The chairman who presides at such meeting and has to receive the poll and declare its result, has *prima facie* authority to decide all emergent questions which necessarily require decision at the time. (Lord Selborne, L.C., in *re Indian Zoedone Co.*, 1884, 26 Ch.D. 70.)

A poll is then demanded, and it is demandable as of right, and the president of the meeting is the person to grant it. (*ib.*)

To sum up the foregoing authorities it is the duty of the chairman to preserve order, and to ensure that proceedings are properly conducted, and that the sense of the meeting is properly ascertained, e.g. by settling the order of debate and speakers, ruling motions and amendments out of order, granting and declaring the result of a poll, and if necessary adjourning or terminating the meeting. The chairman will follow the order of business set out in the agenda (agenda = business to be transacted), but the order may be altered *with the consent of the meeting*.

Keeping Order

(1) MEETINGS CALLED IN PURSUANCE OF A LEGAL DUTY

As already stated, those present have a legal right to attend, and the chairman can, generally speaking, order the removal of a person for misbehaviour. The chairman, before resorting to extreme measures, would satisfy himself that the meeting was with him.

If the good sense and conduct of the members . . . prove . . . insufficient to secure order and decency of debate, the law would sanction the use of that degree of force which might be necessary to remove the person offending from the place of meeting and to keep him excluded. The same rule would apply a fortiori to obstructions caused by any person not a member. (*Doyle v. Falconer*, 1866, L.R., 1 P.C. 328.)

The offender must be allowed a reasonable time to leave the meeting, and then may be ejected. If the order to withdraw is not complied with and the offender resists, he may be made liable for assault, and given into custody.

The status of the police in respect of order at public meetings . . . their duties in this respect are not defined by any public statute but are, generally speaking, to keep the King's peace. . . . Apart from felony or suspicion of felony constables have no general powers at common law to arrest, except when a breach of the peace is committed. . . . Within private premises a policeman taking part in the preservation of order is, generally speaking, under the same liability to an action for damages as a private person: except that under the Public Authorities Protection Act, 1893, legal proceedings against the police are subject to some technical limitations. (*Report of the Departmental Committee of the Home Office*, 1909.)

(2) MEETINGS NOT CALLED FOR PUBLIC ADMINISTRATIVE PURPOSES

It is no doubt the duty of the chairman of a meeting, where a large body of people are gathered together, to do his best to preserve order, and it is equally the duty of those who are acting as stewards or managers to assist him in so doing, but the nature and extent of this duty on both sides cannot be very closely defined a priori, and must necessarily arise out of, and in character and extent depend upon, the events and

emergencies which may from time to time arise. (*Lucas v. Mason*, 1874, L.R., 10 Ex. 251.)

In the case cited the chairman at a meeting of the Church Liberation Association ordered a steward to bring to the front certain disorderly persons in the gallery, and Lucas was seized, although, in fact, not one of the offenders, and injured in the scuffle. He took civil proceedings against the chairman (*Mason*) for assault, but failed in his action.

There had been a *bona fide* mistake, and no unnecessary force used by the steward. In *Hawkins v. Muff* (1911, 2 Glen's L.G. Cases 151) a steward used unnecessary force, with the result that an interrupter, whilst being removed from the meeting, was permanently injured, and the chairman was mulcted in substantial damages.

Settling Order of Debate and Speakers

The chairman, when several persons rise to address the meeting, will decide the right of priority to speak, and call upon the speaker.

Several persons, perhaps, may rise simultaneously to address the meeting : and a general impression may ensue that preference should be shown to one amongst them who has not received the chairman's call. Although by long-established usage the House of Commons systematically defers to the Speaker's decision in this matter, still the power of determining who it is that shall be heard can be exerted by the House. In accordance, therefore, with Parliamentary usage, such a difference of opinion between a meeting and their chairman may be met by a motion that " Mr. Z be now heard " and, if duly seconded, the motion must be submitted by the chairman to the vote. This proceeding is, however, inexpedient, as deference to the chair is a principle which should, if possible, be invariably observed. (*Palgrave's " Chairman's Handbook "*)

Obviously the motion must be decided at once by show of hands.

A motion must be a proposition upon which those present can vote " for " or " against." A motion being before the meeting another person may move—

- (1) an amendment ; (2) the previous question ; (3) the closure ; (4) to consider the next business ; (5) to adjourn the debate ; (6) to adjourn the meeting.

(1) Amendments

(a) An amendment must not be framed in the form of a negative. An amendment that the report and accounts be not received and adopted, moved to the motion " That the report and accounts be received and adopted," is out of order, as the sense of the meeting can be ascertained by a vote on the original motion.

(b) An amendment is usually but need not be seconded. (*Horbury Bridge Co.*, 1879, 11 Ch.D. 109.)

(c) Must be relevant to the motion.

(d) Must be moved before the main question is submitted to the vote.

(e) May be (i) to add certain words to the motion ; (ii) to substitute certain words for others ; (iii) to omit part of the motion ; (iv) to introduce certain words.

(f) The proposer of the amendment should, if possible, hand it in written form to the chairman.

(g) He has no right of reply.

(h) He can only withdraw the amendment, when formally submitted, if the meeting is willing.

EXAMPLE

Motion. That a sum of 2s. 6d. for each adult and 1s. for each child be granted in addition to the ordinary out-relief.

Amendment. That the sums of 5s. and 2s. 6d. be substituted for 2s. 6d. and 1s. respectively in the original motion.

The chairman would put this amendment, and if not carried, a further amendment might be moved.

Amendment. That the sums of 3s. 6d. and 1s. 6d. be substituted for 2s. 6d. and 1s. in the original motion.

If not carried, and no further amendment being proposed, the original motion is then submitted.

If either of the amendments had been carried it would be embodied in the original motion and submitted as the substantive motion in its altered form.

An amendment to an amendment may be moved and must be dealt with before the first amendment, the latter being regarded as a main question. Such an amendment is preferably avoided as it tends to confuse the issue.

(2) The Previous Question

This motion would be "That the question be not now put." If carried the original question is shelved, and cannot be further discussed at the meeting. Moving the previous question means that the meeting must first of all, i.e. previously, decide whether the main question shall be put at all. If carried, the main question cannot be submitted, although it may be again proposed at a subsequent meeting. If lost, the main question is at once put to the meeting.

(3) The Closure

This motion would be "That the question be now put" or "That the vote be now taken." Thus, in the foregoing example, after the first amendment had been moved and discussed, a motion "That the vote be now taken" would have been in order. The closure is a motion which need not be seconded.

If carried, the main question or the amendment, as the case may be, must be at once submitted. If lost, the debate proceeds in the ordinary way.

A "guillotine closure" is a method used in Parliament, a certain time being allotted to portions of a bill, on the expiry of which the decision is taken.

(4) "That the Meeting Now Considers the Next Business"

This motion might have been moved in our previous example as soon as the first amendment was before the meeting. It would not have been in order to move

"That the question be not now put," because the previous question may not be moved during the discussion of an amendment. The previous question could be moved, however, when the main question was before the meeting in its amended form.

(5) "That the Debate be Adjourned "

If this motion is carried the meeting may continue, but the discussion of the particular matter in debate is postponed.

(6) "That the Meeting be Adjourned "

This motion may be moved more than once in the course of debate. The right of the chairman to adjourn has been previously discussed (page 65). The motion need not be in writing, and may be moved by any person who has not already spoken. When a motion has been moved and seconded any person may take part in the subsequent discussion.

As regards meetings called in pursuance of a legal duty, the common law rule is that the chairman cannot adjourn without the sanction of the meeting.

The right is in the assembly itself; for if they be an assembly, all consisting of equals, and there be no custom nor rule of law to direct the adjournment, the right must be in the persons which constitute the assembly. (*Stoughton v. Reynolds*, 1736, 2 Stra. 1045.)

A different rule obtains in the case of political, religious, or social meetings, as those present have no legal right to attend, and the conveners or promoters can adjourn or not, as they think fit.

CHAPTER XVII

VOTING—PROXIES—MINUTES

VOTES are ascertained—

- (1) by voice ("aye" or "nay");
- (2) by show of hands;
- (3) by poll;
- (4) by division.

The differences between these methods of recording votes were explained by the Court in *Cornwall v. Woods* (1846, 4 Notes of Cases at p. 560), as shown on p. 132.

"I am of opinion that when a poll is demanded it is an abandonment of what was done before, and that everything anterior is not of the substance of the election, nor to be so received." (Lord Stowell, in *Campbell v. Maund*, 1836, 5 A. & E. 865.)

The Common Law right . . . is generally understood to be that any voter, however satisfied with the correctness of the declaration on the show of hands, yet may appeal from it to the whole body of electors, and keep a poll open till all have had the opportunity of attending to record their suffrages. (*Reg. v. The Vestry of St. Pancras*, 1839, 11 A. & E. 26.)

Voting by Ballot

The common law rule is that voting shall be by poll or a show of hands, or division.

In *Shaw v. Thompson* (1876, 3 Ch.D. 233) the question whether votes could be recorded by ballot was considered. Vice-Chancellor Bacon observed in the course of his judgment—

When it is said that the ancient usage and custom of this parish has been to have open polling, I do not find sufficient foundation for that statement. There is no ancient custom which imposes it or which amounts to a binding authority upon the parishioners at this day. They are as free as their ancestors were to prescribe regulations as to the mode of voting, provided they are lawful. They are free to say that, although a custom or habit prevailed a hundred or two hundred

years ago of electing in a particular way, they are satisfied that is not now a judicious mode of exercising their rights and therefore they will resolve to exercise them in a different way.

Proxies

As regards companies, proxies have already been dealt with (see Chapter X). At common law there is no inherent right to vote by proxy, so that little more needs to be said here on the matter. It should be mentioned that the word " proxy " is used both for the person appointed to act for another and for the instrument by which he is appointed. A proxy form to be available at one meeting (and any adjournment thereof) needs a penny stamp (impressed or adhesive), which must be affixed before execution. A proxy for more than one meeting needs a ten-shilling impressed stamp.

Minutes

These should be a " true and correct " summary of the business transacted at a meeting, giving the resolutions which were passed thereat. There is a difference between minutes and a report ; the latter would include, in addition to the information contained in the minutes, all the discussion leading up to the resolutions, etc.

There are two classes of minutes, minutes of narration and minutes of resolutions. The former give an explanatory account of the business brought before the meeting, and the latter record the resolutions passed.

The minutes of meetings of companies have already received full consideration in Part I of this book. With regard to the minutes of meetings of public bodies, the subject is provided for in the various standing orders, regulations, etc., referred to in Part III. Specimen minutes of a County Council, a Chamber of Commerce, and a Water Board appear in Appendix I.

PART III

THE MEETINGS OF PUBLIC BODIES

CHAPTER XVIII

LOCAL AUTHORITIES OUTSIDE LONDON

By "local authority" is meant the council of a county, county borough, urban or rural district, or parish. The Local Government Act, 1933, governs the meetings of these bodies, while many of the points dealt with in earlier chapters of this book apply to them except where they are altered by the particular by-laws or standing orders of the local authority.

Various provisions of the Act that affect the meetings of local authorities generally may briefly be summarized as follows:

A member of such authority who has an interest in any contract or other matter, and who is present at a meeting of the authority at which such matter is being considered, must disclose his interest therein and must not take part in the discussion or vote thereon. There are a number of provisions as to what does and what does not constitute such an interest as to disqualify, and many cases have been before the Courts in connection with similar provisions in former Acts.

Subject to the provisions of any other enactment, all questions are to be decided by a majority of the members of the local authority present and voting thereon at a properly convened meeting. A record must be kept of all members present at a meeting. This is usually done in the minutes which have to be kept in a proper book, which minutes must be signed by the person presiding. They are to be open to inspection of any local government elector on payment of

a fee not exceeding one shilling. They are *prima facie* evidence until impeached.

Local authorities make Standing Orders to regulate the business of their meetings except as provided by the Act.

Reports of Meetings

A report published in any newspaper of any meeting of a local authority constituted by Act of Parliament is privileged.

A newspaper is "any paper containing public news, intelligence, or occurrences, or any remarks or observations therein printed for sale, and published in England or Ireland periodically or in parts or numbers at intervals not exceeding twenty-six days between the publication of any two papers, parts, or numbers." Publication in a magazine or trade paper not within this definition would not be privileged. To carry the protection of privilege the report must be fair and accurate, in the public interest, and the public or a newspaper reporter must have had the opportunity of being present.

COUNTY COUNCILS

The business of an administrative county carried on by a chairman, aldermen, and councillors as a body corporate, describes the work of a County Council. The Local Government Act, 1933, and the Standing Orders govern the procedure in England and Wales, excluding London.

Meetings

There is to be an annual meeting and at least three other meetings in every year. The annual meeting is held (1) either in the year of election in March or such other day as the County Council may fix; or (2) in

March, April, or May, as may be determined. The dates for holding the other three meetings are determined by the Council or fixed by standing order. The place of meeting is similarly fixed by the Council, and may be held within or without the county, as may be determined.

Convening a Meeting

The chairman may at any time convene a meeting. A meeting may also be requisitioned by any five members. If the chairman refuses to call the meeting any five members, who may or may not be the persons who requisitioned it, may convene the meeting.

A meeting is convened by notice posted at the office of the Council three clear days before the meeting, specifying time, date, and place of the meeting. In the case of a requisitioned meeting the notice must be signed by the five conveners, and specify the business. If the chairman convenes the meeting the notice signed by him need not specify the business.

Besides the notice, every member must be notified by summons, signed by the clerk of the County Council, left or delivered by post at the member's usual place of abode, not less than three clear days before the meeting.

Non-receipt of a summons by any member does not invalidate the proceedings.

One-fourth of the members constitutes a quorum.

Chairman

The chairman of a County Council is elected annually from among the county aldermen or county councillors or persons qualified to be such. The election is the first business of the annual meeting. A vice-chairman is also appointed.

All meetings are to be presided over by the chairman, or in his absence by the vice-chairman. If both are

absent, an alderman must preside, or failing him, one of the councillors will take the chair. In case of an equality of votes, the person presiding has a casting vote.

Procedure

Reference must be made to the Standing Orders which are revised from time to time and published at the office of the Council.

Amongst interesting points, compared with company procedure, may be noted—

(1) A time-limit is prescribed for speeches in certain circumstances. Thus the mover of an adjournment of the Council may be allowed five minutes, and the seconder may not make any speech. Only one speech may be allowed on behalf of the Council and this, too, may be limited to five minutes.

(2) At a County Council meeting, Standing Orders often provide that "if during any sitting of the Council the attention of the chairman be called to the number of members present, he shall count them, and if it be found that there is not a quorum present the Council shall stand adjourned."

Minutes

The minutes are open to inspection by a burgess or county councillor on payment of 1s., and the same persons may make a copy or take an extract.

But the right of inspection does not apply to all the minutes of proceedings, but only to such minutes as are submitted to the Council for approval, whether approved or not. (*Williams and another v. Mayor, etc., of Manchester*, 1897, 13 T.L.R. 299.)

In this case the corporation had objected to produce the Minute Books kept by the Gas Committee and Rivers Committee on the ground that production was not in the interests of the townspeople.

Committees

A County Council may, from time to time, appoint committees for any purposes which, in the opinion of the Council, would be better managed by a committee.

Apparently the power of raising money by rate or loan cannot be delegated.

A delegation to a committee does not prevent the resumption of the delegated powers by the appointing body. (*Huth v. Clarke*, 1890, 25 Q.B. 391.)

Defamatory Statements at Meeting

Defamatory statements made at a Council meeting are not absolutely privileged. A county councillor who, at a meeting for granting music and dancing licences, made a defamatory statement concerning an applicant, was held to be entitled to the ordinary privilege which applies to communications made on a privileged occasion. (*Royal Aquarium, etc., Society, Ltd. v. Parkinson*, 1892, 1 Q.B. 431.) County councillors are thus in the same position as directors of companies. A Council meeting, like a board meeting, is a privileged occasion. Statements made thereat, if made maliciously, are actionable.

Where as in this case, a body of persons are engaged in the performance of the duty imposed upon them, of deciding a matter of public administration, which interests not themselves, but the parties concerned and the public, it seems to me clear that the occasion is privileged. Therefore, though what is said amounts to a slander it is privileged, provided the person who utters it is acting *bona fide* in the sense that he is using the privileged occasion and is not abusing it. (Per Lord Esher, M.R., in *Royal Aquarium, etc., Society v. Parkinson*, at page 443.)

BOROUGH COUNCILS

A Borough Council consists of the Mayor, aldermen, and councillors of a borough. The Mayor is elected annually from among the aldermen or councillors or persons qualified to be such, and his election is the first

business which must be transacted at the annual meeting of the council. He himself may appoint a deputy mayor from the aldermen or councillors.

Meetings

The statutory regulations are given in Appendix V. A Borough Council must each year hold an annual meeting and at least three other meetings for general business purposes. The annual meeting is held on the 9th November or on the succeeding day, if the 9th is a Sunday.

Convening a Meeting

The Mayor may at any time convene a meeting. A meeting may also be requisitioned by any five members or by one-fourth of the Council members (whichever is the less). If the Mayor refuses to call the meeting within seven days, any five members (or one-fourth of the Council) may convene it.

What constitutes a refusal in this connection was considered by Petersen, J., in *Longfield Parish Council v. Wright* (1918, Loc. Gov. Rept. 865). It need not be a refusal in so many words, and the failure to call an alternative procedure may be equivalent to a refusal.

Three clear days at least before a meeting a notice must be posted at the Town Hall, signed by the requisitionists if the meeting is called by members. In the latter case the notice must specify the business to be transacted. A summons is also sent to members as in the case of county councillors, at least three days before the meeting.

Non-receipt of a summons by any member does not invalidate the proceedings.

Except in the case of business required by the Act to be transacted at the annual meeting, no business can validly be transacted at a council meeting other than that specified in the summons.

Quorum

There must be at least one-third of the Council present or, if more than one-third have become disqualified, then one-third of the qualified members.

Chairman

The meeting is presided over by the Mayor or, in his absence, the members present can choose the Deputy Mayor to be chairman. If both are absent, an alderman or, in the absence of aldermen, a member of Council, is appointed.

Business

The first business of the annual meeting is the election of Mayor, then the election of sheriff, if there is to be one; then the election of aldermen. In the case of other meetings notice must be given of the business. The Dublin Corporation held a special meeting for the purpose of alleviating unemployment. The treasurer was authorized to obtain an advance from the bank of £10,000, which was to be used in work to create employment. The notice was held not to cover this resolution. (*Rex v. Dublin Corporation*, 1911, 2 I.R. 245.)

Committees

Municipal Councils transact their work principally by committees, these being appointed in the main from amongst the members of the Council. Some committees have co-opted members—persons of special knowledge and experience in the particular subject controlled by the committee. The acts of a committee must be submitted for approval to the Council, though there are a few exceptions to this rule. No committee has power to levy a rate or raise a loan.

Minutes

Minutes of the proceedings of every council and committee meeting are to be entered in a book kept

for that purpose, and when signed at the same or the next ensuing meeting by the Mayor, or a member of the Council describing himself as chairman, shall be received in evidence until the contrary is proved.

DISTRICT COUNCILS

Urban and Rural District Councils are corporate bodies consisting of the chairman and the councillors. The Council must hold one yearly meeting, and also at least three other meetings for the transaction of general business. The annual meeting is to be held on or conveniently near each 15th April. (See also Appendix V.)

Convening Meetings

The chairman of the Council may call a meeting at any time. If he refuses to do so for seven days after receiving a requisition from five members (or one-fourth of the number of members of the council, if that is less than five), such number of members may forthwith call a meeting. Three clear days' notice of a meeting is necessary.

Quorum

One-third of the members must be present, but the quorum required must in no circumstances exceed seven.

Chairman

One of their number or *a person outside the body* (who must be a person qualified to be a councillor) must be appointed chairman at every annual meeting. The vice-chairman, if one is appointed, must be a councillor.

Committees

District Councils may act to a great extent through committees, which need not consist exclusively of

members of the Council. No District Council can delegate the power to levy a rate or raise a loan. The proceedings of the committees are subject to confirmation by the Council.

Procedure

Voting is by show of hands. The names of those present and (on the requisition of a member of the Council) of those voting on each question must be recorded so as to show whether each vote given was for or against the question. Every question is decided by a majority of votes of the members "present and voting." The chairman has a casting vote.

Minutes

Minutes must be kept of all proceedings and signed in the ordinary way by the chairman of the meeting, or at the next ensuing meeting.

Where the minutes are printed and copies sent to members they may be taken as read at the next meeting, a resolution to that effect being entered in the Minute Book in lieu of the usual resolution that the Minutes of the last meeting were read and confirmed as correct.

Where such prints take the place of a Minute Book they must be signed by the chairman, and in due course bound up so as to form a permanent record.

PARISH COUNCILS

The Parish Council is a corporate body in a rural parish, consisting of the chairman and councillors. It may consist of from five to fifteen members, as may be fixed from time to time by the County Council. The councillors are elected for three years by the Local Government electors at the Annual Parish Meeting. The chairman may be elected from outside the Council, but must be qualified to be a councillor. His election is the first business of the annual meeting.

Meetings

There is an annual meeting which must be held on or within seven days of the 15th April, and three other meetings. Further meetings may be called by the chairman or two councillors. One-third but not less than three members constitute a quorum. The public may attend any meeting unless the council otherwise directs.

Two members may requisition a meeting if the chairman does not do so. Three clear days' notice of the meeting is necessary. Voting is by show of hands. (See also Appendix V.)

PARISH MEETINGS

The Act of 1933 provides that for every rural parish there shall be a Parish Meeting. Although mention is made of Parish Meetings at this point, it should be noted that a Parish Meeting is not a local authority within the meaning of the Act.

The Parish Meeting consists of the local government electors of the parish who choose to attend. The Parish Meeting of a rural parish is to assemble annually on a date between 1st March and 1st April in each year. Other meetings may be held as arranged by the Parish Council, or (if there is no Parish Council) by the chairman of the Parish Meeting. The meeting is called by the chairman of the Parish Council, or by two parish councillors, or by the chairman of the Parish Meeting, or by any six local government electors for the parish. Public notice of such meetings, specifying time, place, and the business to be transacted, must be given at least seven days before the meeting. The meeting will be presided over by the chairman of the Parish Council if present, or by a chairman elected for the year.

A Parish Meeting may discuss the affairs of the parish

and pass resolutions thereon, and may elect parish councillors in accordance with the authority given by the Act. Minutes of all meetings have to be kept. (See also Appendix V.)

EDUCATION COMMITTEES

Under the Education Act, 1944, the statutory system of public education is organized in three progressive stages known as primary education, secondary education, and further education. As regards meetings, these will be of education committees, school managers, and governors. The provisions of the Act regarding their constitution, etc., are as follows—

Every local education authority must, in accordance with arrangements approved by the Minister of Education, establish education committees for the efficient discharge of its functions with respect to education.

Any two or more local education authorities may, with the approval of the Minister, concur in establishing a joint education committee for the consideration of questions of common interest to them.

Where it appears to the Minister to be expedient that two or more local education authorities should combine for the purpose of exercising some but not all of their functions with respect to education, and that those authorities should establish a joint committee for that purpose, the Minister may, after consultation with the authorities, by order establish a joint education committee of those authorities and provide for the reference to the committee of such questions relating to those functions as in the opinion of the Minister should be so referred; and any such order may provide for authorizing the joint education committee to exercise any of those functions on behalf of the authorities concerned, and may include such incidental and consequential provisions, including provisions with

respect to the appointment and functions of sub-committees, as the Minister thinks desirable.

Every education committee of a local education authority must include persons of experience in education and persons acquainted with the educational conditions prevailing in the area for which the committee acts.

At least a majority of every education committee of a local education authority must be members of the authority.

Every education committee of a local education authority may, subject to any restrictions imposed by the local education authority or the order of the Minister by which the committee was established—

(a) appoint such sub-committees constituted in such manner as the committee may determine; and

(b) authorize any such sub-committees to exercise any of the functions of the committee on its behalf.

The minutes of proceedings of an education committee of the local education authority must be open to the inspection of any local government elector for the area on payment of a fee not exceeding one shilling, and any such local government elector may make a copy thereof or an extract therefrom.

(As to meetings of school managers and governors, see page 200.)

CHAPTER XIX

THE LONDON COUNCILS

THE Local Government Act, 1933, does not apply to London (except in a few matters which do not concern this book) and the metropolitan boroughs are still mainly governed by the Local Government Act, 1899. That Act divided the administrative county of London (outside the City) into metropolitan boroughs.

THE LONDON COUNTY COUNCIL

The London County Council consists of 124 elected representatives and 20 aldermen, and has a Chairman, Vice-Chairman, and Deputy Chairman. Its meetings are usually held every week, but (as in the case of other local authorities) the main business is transacted by Standing Committees which deal with finance, education, public assistance, housing, etc.

METROPOLITAN BOROUGH COUNCILS

These were constituted by the London Government Act of 1899, and are 28 in number—Battersea, Bermondsey, Bethnal Green, Camberwell, Chelsea, Deptford, Finsbury, Fulham, Greenwich, Hackney, Hammersmith, Hampstead, Holborn, Islington, Kensington, Lambeth, Lewisham, Paddington, Poplar, St. Marylebone, St. Pancras, Shoreditch, Southwark, Stepney, Stoke Newington, Wandsworth, Westminster, and Woolwich

The Councils of these boroughs consist of a mayor, aldermen, and councillors, the latter numbering from thirty to sixty, according to the population of the borough. They are elected every three years, and all retire at the same time. The aldermen number one-sixth the number of the councillors, and are chosen

by the councillors to serve for six years, one-half their number retiring every three years.

The Metropolitan Borough Councils usually meet once a month. The notice must state the purpose of the meeting, if such meeting is a special one. The quorum for a meeting is one-third of the Council. The Mayor is chairman, but if he is absent the members may select the deputy mayor or an alderman (or a councillor if no alderman is present) to be chairman. He has a second or casting vote in case of equal voting. Minutes are to be made and signed in the usual way.

THE CITY CORPORATION

The London City Corporation has various powers and duties in the City of London. It is under the control of the Court of Aldermen (the Lord Mayor and the aldermen), the Court of Common Council (the Lord Mayor, 25 aldermen, and 206 common councillors), and the Court of Common Hall (an assembly of the Lord Mayor, aldermen, sheriffs, and "liverymen"). The Court of Common Council is the main legislative and executive body, and meets fortnightly as a rule, except during August and part of September, when the Court is in recess. The Standing Committees meet fortnightly or monthly.

The Lord Mayor is chairman of all three Courts.

Education

For the purposes of the application of the Education Act, 1944, to the County of London, references in the definition of the expression "minor authority" to a borough are to be construed as references to the City of London and to a metropolitan borough, and references in that definition to the council of a borough as references to the Common Council of the City of London and to the council of a metropolitan borough respectively. (See page 199.)

PART IV

THE MEETINGS OF STATUTORY COMPANIES

CHAPTER XX

ORDINARY GENERAL AND EXTRAORDINARY MEETINGS

As mentioned in Part I, the meetings of companies formed by special Act of Parliament—known as Statutory Companies—are governed by the Companies Clauses Consolidation Act, 1845, unless the provisions thereof are varied by their own special Act. Various matters have been touched on from time to time in the earlier chapters, and the purpose of the present section is to link up the various provisions and mention others that have not previously been dealt with.

Ordinary General Meetings

We have seen (pp. 37 and 43) that the first ordinary general meeting must be held within the time prescribed in the special Act, or, if no time is specified, within one month of the passing thereof, and subsequent meetings are to be held half-yearly or as otherwise provided. The business which may be transacted at an ordinary general meeting includes the declaration of dividends, the election of directors, the appointment of auditors, the authorization of a capital increase or of a mortgage, the fixing of the remuneration of the directors, auditors, treasurer, and secretary, the receipt of the report of the directors and auditors and of the accounts and Balance Sheet, the consolidation of shares into stock, and any other business which the special Act authorizes to be done at such a meeting.

Extraordinary Meetings

Meetings other than ordinary meetings may be convened by the directors at such times as they think

fit, and at such meetings no business not set forth in the notice of the meeting shall be entered upon. The notice must fully and clearly disclose the purpose of the meeting. (*Kaye v. Croydon Tramways*, 1898, 1 Ch. 358). Such meetings may be required by shareholders—see Sect. 70 set out on p. 109.

Convening Meetings

Sect. 71 requires fourteen days' public notice at the least of *all* meetings to be given by advertisement, specifying the place, day, and hour of meeting. Any business other than that prescribed for ordinary meetings to be transacted at any meeting must be indicated in the notice. The fourteen days must be exclusive of the day of notice and the day of meeting. As to the purpose of the meeting, the case of *Kaye v. Croydon Tramways* should be again referred to.

Quorum

The necessary number of shareholders to form a quorum will probably be specified in the special Act; if no quorum is prescribed, then shareholders holding in the aggregate not less than one-twentieth of the capital, and being in number not less than one for every five hundred pounds of such proportion of capital, will form the quorum. There is, however, a proviso that if such number would be more than 20, then 20 shareholders holding one-twentieth of the capital will suffice. The meeting has to be adjourned if no quorum is present within an hour after the time for the meeting to begin, unless it has been called to declare a dividend, in which case that business may be transacted.

Chairman

Sect. 73 of the Companies Clauses Act, 1845, provides for the election of a chairman, and reference should be made to p. 59 on which this section is set out.

Adjournment of Meeting

The majority of those present at a meeting may adjourn it. The business to be transacted at adjourned meetings is that left unfinished at the original meeting—see p. 66.

Voting

We have seen (pp. 93, 100, and 101) the statutory requirements as to votes of shareholders and the manner of recording them, and it only remains under this heading to note that a corporation-shareholder may appoint as its proxy any member thereof though he is not personally a shareholder.

CHAPTER XXI

MEETINGS OF DIRECTORS

THE date and time for holding meetings of the board of directors of a statutory company are left entirely to the discretion of the directors, and at any time any two directors may request the secretary to call a board meeting. (See Sect. 92 of the Act set out on p. 4.) All questions before the meeting are to be decided by a majority of votes, and the chairman is entitled to a casting vote to be used if the voting is equal.

Chairman

The directors elect one of their number to be chairman for the year, and also a deputy-chairman if they so desire. Reference should be made to Sects. 93 and 94 of the Act (p. 4) for the requirements as to the chairmanship of directors' meetings.

Committee of Directors

Sects. 95 and 96 of the Act permit the directors to appoint from amongst their number one or more committees for the purpose of dealing with specific business for which lawful power is given to them to act on behalf of the company. Such committees may not apportion amongst themselves duties delegated to them as a body, but their powers must be exercised jointly. (*Cook v. Ward*, 1877, 2 C.P.D. 255.) The case cited is dealt with at p. 207 of the present book.

It is necessary that minutes of committee meetings should be kept, as mentioned on p. 5, and the minutes must be signed by the chairman of the meeting concerned—but he may sign at a subsequent meeting. (See *West London Railway Co. v. Barnard*, 1843, 3 Q.B. 873, dealt with on p. 236.)

The committee's findings will be placed before the board in the form of a report, and it is usual for a copy of this report to be sent out to the directors with the agenda for the board meeting at which the business covered by the report is to be considered.

Directors Not Personally Liable

Sect. 100 of the Act, set out on p. 23, provides that the directors are not to be personally liable for their acts when "lawfully executing any of the powers" given to them. All persons dealing with the company may assume that the directors are acting within their powers, and that all conditions have been fulfilled, unless they have notice to the contrary. (*Royal British Bank v. Turquand*, 1856, 6 E. and B. 327.)

The directors must act together as a board—they cannot act without meeting. (*D'Arcy v. Tamar Hill Rly. Co.*, 1867, L.R. 2 Ex. 158.)

PART V

LAW REGARDING DEFAMATION

CHAPTER XXII

NOTES ON THE SUBJECT OF DEFAMATION

REFERENCE to defamation has been made in other parts of this book, but it is so important that it has been thought well to note some further points and outline the broad principles of the law in this chapter.

Under the heading of Defamation are included the two wrongs that are known to English law under the titles of libel and slander.

Libel is the malicious publication of untrue statements without just cause or excuse, which expose or tend to expose another person to hatred, contempt, or ridicule, or are calculated to injure him in his business.

Slander is defamation by words spoken and not written. The nature of the words must be similar to that in the case of libel, and there must be a publication to a third person.

There are three defences available in an action for defamation in regard to speeches made at meetings or published reports thereof—Fair Comment (just and reasonable comment upon matters of public interest, made without malice); Privilege, absolute or qualified; and Justification.

Fair Comment

This defence is available only when the statement complained of is made *bona fide* on a matter of public interest, and is met with chiefly in connection with public meetings, and particularly in respect of newspaper reports. Matters of public interest are those concerning public affairs, and fair comment thereon

must be (a) based on statement of fact, and (b) a *bona fide* and honest opinion of the speaker; and it must not be malicious.

Privilege

There are two kinds of privilege: Absolute and Qualified. The former is a privilege granted to members of Parliament when speaking in the House and to those making speeches in courts of law, military courts, etc. Qualified privilege is the defence normally available in an action for defamation at a board or general meeting of a company. To sustain this defence, the statements must have been made as "privileged communications" on "privileged occasions." "Privileged communication comprehends all cases of communications made *bona fide* in performance of a duty, or with a fair and reasonable purpose of protecting the interest of the party using the words." (*Somerville v. Hawkins*, 1850, 10 C.B. 583.) "A privileged occasion is one which is held in point of law to rebut the legal implication of malice which would otherwise be made from the utterance of untrue defamatory language." (*Stuart v. Bell*, 1891, 2 Q.B. 341.) In the same case, Lindley, L.J., said that malice "is not confined to personal spite and ill will, but includes every unjustifiable intention to inflict injury on the person defamed."

The following are examples of privileged statements—

(a) Fair and accurate reports in a newspaper of the proceedings of a public meeting, meeting of a local authority, or of statements authorized for publication by a Government official or department, if they are not made maliciously.

(b) Statements made at board and general meetings of companies by a person entitled to be present, and to speak and who is actuated by a sense of duty in making the statement, provided that such statements are

warranted by the circumstances and are not malicious, and that there is no undue publication.

(c) Statements made at meetings of local authorities. (*Royal Aquarium Society v. Parkinson*, 1892, referred to in Appendix VI of this book.)

Press Reports

The presence of reporters at the meeting and, as a consequence, publication in the Press, will not take away the privilege, if the reporters are present in accordance with usual custom. This point was settled in *Pittard v. Oliver* (1891, 1 Q.B. 474), where a member of a board of guardians made defamatory statements at a board meeting at which reporters were present.

We must assume that the reporters were allowed to be present by the guardians as a body, over whose acts the defendant had no control; he could not prevent the reporters being present. Was, then, his duty to the guardians and to the ratepayers generally taken away by the presence of those other persons who were not called in by him and over whose presence he could exercise no control? The question answers itself: the presence of these persons left his duty to discuss the matter untouched; the occasion was privileged for the performance of that duty, and the privilege was not taken away by the presence of such people under such circumstances.

What is the position if the speaker has invited the Press to attend? The answer appears in *Parsons v. Surgey* (1864, 4 F. and F., 247), the head-note to which runs as follows—

A shareholder of a railway company having summoned a meeting of shareholders, which he invited others, and especially the reporters for the public Press, to attend, and at this meeting made defamatory comments on the conduct of the plaintiff—one of the directors—relating to the affairs of the company. *Held* that, though a discussion of the matter before a meeting of shareholders would have been excused, there was no excuse for a publication to others than shareholders.

In *Parsons v. Surgey*, the speaker lost his privilege because the Press attended at his invitation.

The Law of Libel Amendment Act, 1888, provides

that newspaper reports of proceedings at public meetings shall be privileged " unless it shall be proved that such report or publication was published or made maliciously." But the matter must be of public concern and the publication for the public benefit. Hence, it does not follow that a report of all that was said in the course of a speech on the affairs of the company would be protected. Thus, in *Ponsford v. Financial Times, Ltd.* (1900, 16 T.L.R. 248), the defendant company had published a fair report of a company meeting and gave a verbatim report of the chairman's speech, in which he made defamatory statements concerning the plaintiff, who was the cashier of the company. These statements were false, and the cashier received damages against the chairman. Mathew, J., held that the *Financial Times* was not protected by the Law of Libel Amendment Act, 1888, as the chairman's references to the cashier were not for the public benefit.

He was stating his opinion or impression that the plaintiff, who had been dismissed, had been guilty of criminal conduct as a servant of the company. . . . It was, therefore, not a matter the publication of which was for the public benefit.

The case of *Standen v. South Essex Recorders* (1934 50 T.L.R. 365), should also be mentioned in this connection. A report of the proceedings of the local council was published and in the *correspondence* column of the same issue of the newspaper was a letter which contained defamatory statements about one of the councillors. The defences put forward were that the letter was true and a fair comment, and published on a privileged occasion on a matter of public interest. It was held that there was no privilege as it was outside the restricted privilege (to publish a fair report of the proceedings of the meeting) allowed by the Law of Libel Amendment Act, and such a privilege did not extend to all statements published in a newspaper, although they may be matters of public interest.

An internal report on charges against employees was, in accordance with regular practice of a borough council, sent with agenda, minutes, etc., to a public library and exhibited there. *Held*, in *De Buse v. McCarty and Stepney Borough Council* (1941, J.P. 626), that publication was not privileged, although communication of the *decision* reached might have been privileged.

Justification

Justification is that form of defence to an action for damages for libel which consists in proving the entire truth of the libel. To succeed in this plea it is necessary to prove that the words complained of are true in substance and in fact, and also that the whole of such words is substantially true. Undue publication would defeat a plea of justification.

"Newspaper," in the Law of Libel Amendment Act, 1888, means "any paper containing public news, intelligence, or occurrences, or any remarks or observations therein printed for sale, and published in England or Ireland periodically, or in parts or numbers at intervals not exceeding twenty-six days between the publication of any two such papers, parts or numbers; also any paper printed in order to be dispersed and made public weekly or oftener, or at intervals not exceeding twenty-six days, containing only, or principally, advertisements."

Magazines and monthly trade papers are, therefore, outside the protection of the Act.

Circulars sent to shareholders by a member of the company, provided there is no unnecessary publication, e.g. by sending copies to persons not members, are privileged. A circular circulated amongst shareholders and issued by a solicitor acting for some of the members was stated to be *prima facie* a privileged communication, in *Quartz Hill Consolidated Gold Mining Co. v. Beall* (1882, 20 Ch.D. 501).

APPENDIX I

PRECEDENT MINUTES OF MEETINGS OF PUBLIC BODIES

- (1) County Council.
- (2) Chamber of Commerce.
- (3) Water Board.

County Council

At a meeting of the Council of the Administrative County of London held at the County Hall, Westminster Bridge, on the day of 19 , under and by virtue of the Local Government Act, 1899.

Present (Names)

- (1) Chair taken by the chairman of the Council.

MINUTES

(2) The printed minutes of the proceedings at the meeting of the Council held on having been laid before the Council

Resolved. That the minutes, as printed, be confirmed.

The minutes were thereupon signed by the chairman of the Council.

TENDERS

(3) The undermentioned tenders were opened and were initialed by the deputy-chairman of the Council. (Particulars.)

SEALING

(4) Report by the deputy-chairman of the Council as follows—

Date

I have to report under Standing Orders No. 41 that the Seal has been affixed, under the authority specified, to 83 original documents, 25 duplicates, and 17 plans, the particulars of which appear on pages of Seal Register namely:

(Particulars)

QUESTIONS

(5) The chairman of the Council called (in rotation) upon those members of the Council who had given notice in writing under Standing Order No. 42 of questions to chairmen of committees, seven questions being thereupon put and replies given.

(6) The chairman of the Council under Standing Order No. 33 at this stage brought before the Council the following report.

REPORT OF THE GENERAL PURPOSES COMMITTEE

(REPORT)

Resolved. That the report be received (4a and 6). Recommendations No. 4a and 6 moved, put, and agreed to.

Resolved accordingly.

Chamber of Commerce

Minutes of the monthly meeting of the Council held at the
registered offices of the chamber on the
. at p.m.

Present

The minutes of the last meeting having been circulated were taken as read and signed as a correct record of the proceedings.

The following letter was read. Letter dated from the Secretary of the Aberdeen Chamber of Commerce.

(Letter)

REPORT OF THE GENERAL PURPOSES COMMITTEE

It was *resolved* that the report of the General Purposes Committee now submitted be approved, adopted, and entered on the minutes.

(Report)

Your committee beg to report that some time ago the British National Committee had under consideration a number of draft resolutions and questionnaires received from the International Chamber of Commerce relating to the treatment of foreigners.

Your committee recommend that a letter be addressed to the British National Committee intimating that the Chamber is in favour of the re-opening of the question of treatment of foreigners, and supports the proposals for issuing publications on the matter.

Your committee have to report that careful consideration has been given to the steps to be taken to enlist the utmost support for Clause 24 of the Rating and Valuation Bill. As the Council will be aware, this clause relates to the rating of machinery, and it is the intention of the Government to leave the clause to the free vote of the House of Commons.

Your committee recommend that a letter be addressed to all members of the House of Commons requesting them to support the clause.

Resolutions. That a letter be addressed to all members of the House of Commons requesting them to support Clause 24 of the Rating and Valuation Bill, and that the letter be accompanied by the Memorandum set out in the report of the Imperial and Local Finance Committee.

(A form with recitals)

Whereas the Yarn Section and the Engineering Section have in reporting upon the subject of the metric system declared against its compulsory adoption, whilst the Home Trade and the African Sections have declared in favour of it, and

Whereas the Chamber for a long period of years declared itself generally in favour of the metric system and its compulsory adoption, but objected against its compulsory use in the case of the yarn trade,

Resolved. That any future action taken by the Chamber in support of the compulsory adoption of the metric system shall maintain that the cotton-yarn trade and the engineering trade ought to be excepted from such legislation, either by a clause in the Act or by the terms of an Order in Council, power to issue such orders to be provided in the Act.

Water Board

The minutes of the proceedings at the meeting of the Board held on, copies of which had been sent to all members, having been laid before the Board,

(652) *Resolved.* That the minutes of the meeting of the Board held on as printed, be confirmed and signed. The minutes were thereupon signed by the chairman.

(653) *Resolved.* That the following report of the Finance Committee (dated) be and is hereby received.

Present. AB (chairman of the Committee) in the chair. CD (vice-chairman of the Committee). EF (chairman of the Board). GH (vice-chairman of the Board). IJ, KL, etc.

CASH PAPER

(1) We submit the cash paper (No.) of proposed payments, payments made, receipts, and balances.

We have included in the list of proposed payments our estimate of the amount required to meet payments out of the Urgency Fund to (date) and recommend (a) that the estimate of payments to be made out of the Urgency Fund, Cash Paper No. 9 (Statement No. 2) amounting to £... be approved.

We have examined the books of the Treasurer and Banker of the Board, and find that the cash balances, receipts on revenue account, and temporary investments, as shown in Cash Paper No. 9 (Statements Nos. 5, 6, and 7) are correctly stated.

We have applied the sum of £..... available in the Stock (A) Redemption Fund to the purchase at of stock for cancellation, but recommend that the Registrar be instructed to cancel, as from the dates specified the under-mentioned stock, and that the Seal of the Board be affixed to necessary documents.

(Particulars of stock)

(654) *Resolved accordingly.*

AB
Chairman.

On the motion to adopt the recommendation contained in paragraph No. of the committee's report,

Amendment moved by seconded by That all words after the word " That " in line one be omitted, and the following substituted therefor, viz.—" the recommendation be referred back to the committee with instructions to report to the Board as to whether the clerk and the solicitors advise that the procedure in this matter conforms with Sect. 20 (3) of the Metropolis Water Act, 1902.

After debate,

Amendment put to the vote, and the Board having divided, there appeared

For the amendment 10.

(Names)

Against the amendment 34.

(Names)

Amendment declared to be lost.

Motion put to the vote and declared to be carried.

REPORT OF THE GENERAL PURPOSES COMMITTEE

On the motion—That the report of the General Purposes Committee be received—

The chairman of the committee, by leave of the Board, withdrew paragraph No. 5 thereof.

(655) *Resolved.* That the following report of the General Purposes Committee, with the exception of paragraph No. 5 thereof, be and is hereby received.

(Report)

PRECEDENT RESOLUTIONS

Resolved accordingly. Three-fourths of the members present and voting so deciding.

Resolved. That excess votes amounting to £..... now submitted by the Finance Committee be and are hereby approved and that the course taken by the Finance Committee in incurring expenditure, etc., be and is hereby also approved.

Resolved. That the Board do place on record their high appreciation of the services rendered by and that the Seal of the Board be affixed to a testimonial framed in suitable terms.

On the motion—That the report (No. 1) of the Works and Stores Committee be received—

The chairman of the committee, by leave of the Board, amended paragraph No. 5 by the substitution of the word "notices" for the word "notice" in line six thereof.

Resolved. That the following report (No. 1) of the Works and Stores Committee, as amended, be and is hereby received.

STANDING ORDERS¹

Governing procedure in debate at Council and General Meetings.

VOTING

The votes upon all questions shall be taken by a show of hands, but, subject to the discretion of the chairman, a vote may be taken by division or ballot. The ruling of the chairman shall be accepted on all questions of order which may arise.

PROPOSITIONS

No proposition shall be voted upon or entertained by the meeting until it has been moved and seconded and delivered to the chairman in writing, signed by the mover, unless the text of the proposition already appears on the agenda. No proposition shall be withdrawn except with the consent of the meeting.

(a) Members shall not, except with the consent of the chairman, speak more than once on the same motion, provided always that a member may speak to a point of order or in explanation of some material part of a speech made by him.

(b) The mover of a proposition shall have a right of reply, which reply shall not be allowed to introduce any new matter.

AMENDMENTS

(a) When an amendment is moved upon a proposition, the amendment shall not be discussed until it has been seconded, whereupon it shall be handed to the chairman in writing. An amendment to an amendment may, at the discretion of the chairman, and with the consent of the mover and seconder of the original amendment, be accepted, but unless the consent of the mover and seconder is obtained, the amendment to the proposition shall be put in its original form. No second amendment to a proposition shall be moved or taken into consideration until the first has been disposed of or withdrawn.

¹ By permission of the National Federation of Property Owners and Ratepayers.

(b) If the first amendment be carried it shall displace the original proposition, and become itself the question, or the original proposition as amended shall become the question, whereupon any further amendments may be moved in the same manner in succession.

(c) If the first amendment be negatived, others may be moved in succession upon the original question under consideration, but only one amendment shall be submitted to the meeting for discussion at one time. After all amendments have been disposed of, the question shall be put upon the original or amended proposition.

(d) When discussion arises upon an amended proposition, the mover of the amendment which has displaced the original proposition may speak in reply, and so in like manner with respect to any further displacing amendments.

CLOSURE

If not less than three members, in addition to the mover and seconder, have spoken on a motion, it shall be competent for any member to move "that the question be now put." It shall then be in the chairman's discretion to put the question forthwith or to leave it to the meeting to decide, and if two-thirds of the members present vote in favour, the question shall be put without further discussion, after reply, which the mover of the resolution shall be entitled to.

APPENDIX II

LOCAL AUTHORITIES (ADMISSION OF THE PRESS TO MEETINGS) ACT, 1908

1. Representatives of the Press shall be admitted to the meetings of every local authority: Provided that a local authority may temporarily exclude such representatives from a meeting as often as may be desirable at any meeting when, in the opinion of a majority of the members of the local authority present at such meeting, expressed by resolution, in view of the special nature of the business then being dealt with or about to be dealt with, such exclusion is advisable in the public interest.

2. For the purposes of this Act the expression "local authority" means—

(a) A council of a county, county borough, borough (including a metropolitan borough), urban district, rural district, or parish, and a joint committee or joint board of any two or more such councils to which any of the powers or duties of the appointing councils may have been transferred or delegated under the provisions of any Act of Parliament or Provisional Order; and a parish meeting under the provisions of the Local Government Act, 1894;

(b) An education committee and a joint education committee, established under Sect. 17 of the Education Act, 1902, so far as respects any acts or proceedings which are not required to be submitted to the council or councils for its or their approval;

(c) A board of guardians, and a joint committee constituted in pursuance of Sect. 8 of The Poor Law Act, 1879, and the board of management of any school or asylum district formed under any of the Acts relating to the relief of the poor;

(d) A central body and a distress committee under The Unemployed Workmen Act, 1905;

(e) The Metropolitan Water Board and a joint water board constituted under the provisions of any Act of Parliament or Provisional Order;

(f) Any other local body which has, or may hereafter have, the power to make a rate.

The expression "rate" means a rate the proceeds of which are applicable to public local purposes, and leviable on the basis of an assessment in respect of property, and includes any sum which, though obtained in the first instance by a precept,

certificate, or other document requiring payment from some authority or officer, is or can be ultimately raised out of a rate.

The expression "representatives of the Press" means duly accredited representatives of newspapers and duly accredited representatives of news agencies which systematically carry on the business of selling and supplying reports and information to newspapers.

3. This Act shall not extend to any meeting of a committee of a local authority, as defined for the purposes of this Act, unless the committee is itself such an authority.

4. Nothing in this Act shall be construed so as to prohibit a committee of a local authority from admitting representatives of the Press to its meetings.

5. Nothing in this Act shall be construed so as to prohibit a local authority from admitting the public to its meetings.

6. In the application of this Act to Scotland—

(1) The expression "local authority" means—

(a) A county council, a town council, a parish council, a school board, and a district committee constituted under The Local Government (Scotland) Acts ;

(b) A central body, and a distress committee under The Unemployed Workmen Act, 1905 ;

(c) Any other local body, board, joint board, or committee which has or may hereafter have the power to impose a rate as defined in Sect. 2 of this Act and which does not require to report its proceedings to any other local authority ;

(2) The definition of the expression "local authority" in Sect. 2 of this Act, shall not apply to Scotland.

7. (1) This Act may be cited as "The Local Authorities (Admission of the Press to Meetings) Act, 1908."

(2) This Act shall not extend to Ireland.

APPENDIX III

PUBLIC MEETING ACT, 1908

1. *Penalty on endeavour to break up Public Meeting.*

(1) Any person who at a lawful public meeting acts in a disorderly manner for the purpose of preventing the transaction of the business for which the meeting was called together shall be guilty of an offence, and, if the offence is committed at a political meeting held in any parliamentary constituency between the date of the issue of a writ for the return of a Member of Parliament for such constituency and the date at which a return to such writ is made, he shall be guilty of an illegal practice within the meaning of The Corrupt and Illegal Practices Prevention Act, 1883 (46 & 47 Vict. c. 51), and in any other case shall, on summary conviction, be liable to a fine not exceeding five pounds, or to imprisonment not exceeding one month.

2. Any person who incites others to commit an offence under this section shall be guilty of a like offence.

It is thought that this Act does not give any additional power and imposes no additional duties on the police, but it makes the deliberate interruption of public meetings an offence cognizable by the law. The view taken by the police is that they are not required to take any initiative under the Act, and are not empowered to arrest interrupters. It is not their business to secure a hearing for speakers. It is for the speakers to get on such good terms with their audience that they can secure a hearing for themselves. The police ought not to interfere except to prevent a breach of the peace, and it may and must often happen that an act constituting a breach of the peace may not be done within sight of a police officer, or if done in his sight it may not be in his power to arrest the particular wrongdoer.

THE FOLLOWING IS AN EXTRACT FROM THE REPORT OF THE DEPARTMENTAL COMMITTEE ON THE DUTIES OF THE POLICE WITH RESPECT TO THE PRESERVATION OF ORDER AT PUBLIC MEETINGS (1909, C.D. 4673)—

40. Our attention has been necessarily directed to the Public Meeting Act which became law in December, 1908. This Act enacts that "any person who, at a lawful public meeting, acts in a disorderly manner for the purpose of preventing the transaction of the business for which the meeting was called together shall be guilty of an offence" punishable on summary

conviction by a fine not exceeding £5 or imprisonment not exceeding one month. Another subsection makes any person who incites others to commit an offence under the Act guilty of a like offence. This Act does not directly confer any additional powers or impose any additional duties on the police, but it makes the deliberate interruption of public meetings for the first time an offence cognizable by the law. The view generally taken by the chief constables who have given evidence before us is that the police are not bound to take any initiative under the Act. It does not empower them to arrest an interrupter or even to take his name and address. The general view is that the police may properly assist the promoters of a meeting in obtaining the name and address of deliberate interrupters, and ought to give the promoters every opportunity of charging them under the Act. With scarcely any exceptions, the chief constables have stated that they would not feel justified in directing the police to prosecute interrupters, but would require the charge sheet to be signed by a promoter or steward of a meeting, who would then become liable to prosecute the parties charged. This seems to us a sound construction of the Act as it stands.

PUBLIC ORDER ACT, 1936

This is an Act which prohibits the wearing of uniforms in connection with political objects, gives powers to the police for the preservation of public order on the occasion of processions, prohibits the taking of offensive weapons to public meetings and processions, and prohibits offensive conduct conducive to breaches of the peace.

APPENDIX IV

THE REPORT OF THE DEPARTMENTAL COMMITTEE ON THE DUTIES OF THE POLICE WITH RESPECT TO THE PRESERVATION OF ORDER AT PUBLIC MEETINGS (1909).

This report summarized the information supplied by the Metropolitan Police authorities, the chief constables of the counties, county borough and borough police forces. The following are extracts—

1. In the Metropolis, Liverpool, Bristol, and other large towns, and in most of the county forces (about sixty-nine in all, or more than one-third of the total number of forces), the police are not allowed to enter political meetings at all, except in the case of a breach of the peace.

The following are illustrations of the general instructions given to the police on duty at public meetings in these places—

Metropolitan Police District. "Police on duty at the entrances of or in the streets near to public buildings where a meeting is held are to regulate traffic and prevent obstruction of the thoroughfares.

"They are not to enter or interfere within the building unless called upon to suppress actual breach of the peace, or to take into custody any person charged by another with committing an offence of which the police can take legal cognizance."

Liverpool. "As to the inside, the preservation of order is a matter for the managers and promoters of the meeting; how far they have a right to secure freedom from interruption by forcibly ejecting interrupters is a question which does not concern the police, but the one thing certain is that it is no business of the police to keep the people quiet or to put out those who interrupt.

"The police are not to go inside any building where there is a public meeting unless a breach of the peace is imminent or has taken place. If it has taken place, so long as no felonious assault has been committed, all they have to do is to give the parties each others' names and addresses and let them take their own remedies, whether they complain that they have been disturbed and assaulted, or that force has been used to put them out as disturbers. If the breach of peace has not taken place but is imminent, all they must do is to do their best to prevent it; but they must not eject or help to eject anybody unless matters are so bad that it is necessary to disperse the meeting by clearing the place altogether."

2. On the other hand, in Manchester, Cardiff, and the majority of borough forces (about ninety-one in all, or about

one half of the total forces), the police are allowed to attend inside political (as well as other public) meetings on the application of the promoters and at their charge. In these cases the members of the force so attending as a rule get "special duty pay," sometimes even if their presence at the meeting falls within their ordinary hours of duty.

The *Manchester* practice is described as follows: "Police officers are sent to preserve order at political or other public meetings when a request is made in writing by the promoters of the meeting. The promoters state the number of men required inside the building and the number of men asked for is then sent. They are stationed inside the room where the meeting is held. Payment is made for their services according to a scale adopted by the Watch Committee, and the men are either in uniform or plain clothes according to the desire of the persons who make application for their services. Besides this, in cases where disorder is anticipated at meetings, one or two constables in plain clothes are instructed to enter the building to take observations, whilst a number of officers in uniform patrol the neighbourhood outside in order to deal with any emergency that may arise. These men are always in charge of a superior officer, and have instructions not to enter the building unless requested to do so by the chairman or other responsible persons. In such cases the men are not paid for by the promoters. The general instructions to constables hired inside the building are that they must only act on the directions of the chairman or some responsible person, and must not eject persons unless a breach of the peace is imminent. The stewards must eject, and the police must see that no breach of the peace is committed while this is being done. Constables on duty at meetings are instructed to exercise a careful discretion and judgment, and a superior officer is always in charge of the men, who has a large discretion. The police do sometimes eject on their own initiative. As a matter of practice the police act merely as the servants of the conveners of the meeting. All meetings are protected, if the police are asked for. Payment is required, so that the police may not be called on too frequently. Constables are not called from their ordinary duty, but it is done in their own time. They receive eightpence an hour 'special duty pay,' and twopence an hour goes to the Superannuation Fund, or to an insurance fund. Policemen, are, however, sent to many meetings without any payment whatever, when a disturbance is likely, for the protection of the public and to maintain order and see fair play."

3. The third practice prevails in *Birmingham*, and in a small number of other forces, where it is stated that the police attend inside at political (and sometimes at other public) meetings in the ordinary course of duty—i.e. with or without application

from, but without charge to, the promoters. Apparently, however, this practice is usually confined to those meetings where serious disorder or breach of the peace is apprehended.

The practice at *Birmingham* is thus described by the chief constable—

“As a rule, the organizers of indoor meetings, when they consider they require the police, approach the chief constable for their attendance, and police are sent there under the control of their own officers. The organizers are told to make their own arrangements as to stewarding and preserving order, and that the police will assist them, if assistance is necessary. When there is likely to be immediate necessity for their help, the police are put inside, in view of the public, in the public part of the building; when it is not likely, they are put in rooms inside the building apart. The same practice is followed at non-political as at political meetings. Since 1901 the police have not been paid for. If there is a disturbance the stewards act, and the police support them and assist if there is resistance. If disturbance is anticipated, the police approach the conveners, even if no application is made. Police are not supplied to prevent interruptions, but to prevent disturbance.”

Summarizing the foregoing diversities of practice of the various police forces, the Report stated that the police act on three distinct principles—

1. That it is unwise for the police to interfere inside political meetings any further than they are bound to do in order to prevent actual breaches of the peace;

2. That it is expedient to assist the promoters of public meetings to keep order inside, but that this is a special duty of the police which must be paid for by the persons desiring their assistance;

3. That keeping order inside public meetings is part of the ordinary duties of the police, for which no payment ought to be asked.

The Report continued: “We have indicated our ‘preference for the policy of non-interference in ordinary political meetings, although on exceptional occasions it may become necessary or advisable to station police inside a meeting for the purpose of maintaining order We do not think there is any substantial evidence of a growing tendency to break up public meetings to an extent which would justify any serious departure from the existing practice. We believe that the right of public meeting will be best safeguarded in the future, as at present, by leaving the responsible police authorities of each locality to determine the practice most suitable to the very varying circumstances with which they have to deal, and with which they have, on the whole, successfully dealt with in the past.’ ”

APPENDIX V

STATUTORY REGULATIONS FOR MEETINGS OF PUBLIC BODIES

BOROUGH COUNCILS

Schedule III, Part II, Local Government Act, 1933, is as follows—

1.—(1) The council of a borough shall in every year hold an annual meeting and at least three other meetings, which shall be as near as may be at regular intervals, for the transaction of general business.

(2) The annual meeting shall be held at twelve noon, or at such other hour as the council may from time to time determine, on each ninth day of November, and the other meetings shall be held at such an hour on such other days before the first day of November next following as the council at the annual meeting decide or by standing order determine.

2.—(1) The mayor may call a meeting of the council at any time.

(2) If the mayor refuses to call a meeting after a requisition for that purpose, signed by five members or by one-fourth of the whole number of members of the council, whichever is the less, has been presented to him, or if, without so refusing, the mayor does not call a meeting within seven days after such requisition has been presented to him, any five members or one-fourth of the whole number of members of the council, whichever is the less, on that refusal or on the expiration of seven days, as the case may be, may forthwith call a meeting of the council.

(3) Three clear days at least before a meeting of the council of a borough (a) notice of the time and place of the intended meeting shall be published at the town hall, and where the meeting is called by members of the council, the notice shall be signed by those members and shall specify the business proposed to be transacted thereat; and

(b) a summons to attend the meeting, specifying the business proposed to be transacted thereat, and signed by the town clerk, shall be left at or sent by post to the usual place of residence of every member of the council.

Provided that want of service of the summons on any member of the council shall not affect the validity of a meeting.

(4) Except in the case of business required by this Act to be transacted at the annual meeting of the council, no business

shall be transacted at a meeting of the council other than that specified in the summons relating thereto.

3.—(1) At a meeting of the council of a borough, the mayor, if present, shall preside.

(2) If the mayor is absent from a meeting of the council, the deputy mayor, if chosen for that purpose, by the members of the council then present, shall preside.

(3) If both the mayor and the deputy mayor are absent from a meeting of the council, or the deputy mayor, being present, is not chosen, then such alderman, or, in the absence of all the aldermen, such councillor as the members of the council present shall choose shall preside.

(4) Subject to the provisions of Part V of this Schedule,¹ no business shall be transacted at a meeting of the council of a borough, unless at least one-third of the whole number of members of the council are present thereat.

DISTRICT COUNCILS

Schedule III, Part III, of the Local Government Act, 1933, has the following provisions as to meetings of District Councils—

1.—(1) The council of an urban or rural district (in this Part of this Schedule referred to as "the council") shall, in every year, hold an annual meeting and at least three other meetings for the transaction of general business.

(2) The annual meeting of the council shall be held on or as soon as conveniently may be after the fifteenth day of April in every year.

(3) A meeting of the council shall not be held in premises licensed for the sale of intoxicating liquor, except in cases where no other suitable room is available for such meeting either free of charge or at a reasonable cost.

2.—(1) The chairman of the council may call a meeting of the council at any time.

(2) If the chairman refuses to call a meeting of the council after a requisition for that purpose, signed by five members, or by one-fourth of the whole number of members of the council, whichever is the less, has been presented to him, or if, without so refusing, the chairman does not call a meeting within seven days after such requisition has been presented to him, any five members, or one-fourth of the whole number of members, of the council, whichever is the less, on that refusal or on the expiration of seven days, as the case may be, may forthwith call a meeting of the council.

(3) Three clear days at least before a meeting of the council—

(a) notice of the time and place of the intended meeting shall be published at the offices of the council, and where

¹ See Chapter XVIII.

the meeting is called by members of the council the notice shall be signed by those members and shall specify the business proposed to be transacted thereat; and

(b) a summons to attend the meeting, specifying the business proposed to be transacted thereat, and signed by the clerk of the council, shall be left at or sent by post to the usual place of residence of every member of the council:

Provided that want of service of the summons on any member of the council shall not affect the validity of the meeting.

3.—(1) At a meeting of the council the chairman of the council, if present, shall preside.

(2) If the chairman of the council is absent from the meeting of the council, the vice-chairman of the council, if present, shall preside.

(3) If both the chairman and the vice-chairman of the council are absent from a meeting of the council, such councillor as the members of the council present shall choose shall preside.

4. Subject to the provisions of Part V of this Schedule,¹ no business shall be transacted at a meeting of the council unless at least one-third of the whole number of members of the council are present thereat:

Provided that in no case shall a larger quorum than seven members be required.

5. An inspector appointed by the Minister shall be entitled to attend any meeting of the council as and when directed by the Minister, and to take part in the proceedings thereat but not to vote at the meeting.

6. The mode of voting at meetings of the council shall be by show of hands, and on the requisition of any member of the council the voting on any question shall be recorded so as to show whether each member present and voting gave his vote for or against that question.

PARISH COUNCILS

The regulations for the meetings of Parish Councils are contained in Part IV of the Third Schedule of the Act of 1933, and are as follows—

1.—(1) A parish council shall in every year hold an annual meeting and at least three other meetings.

(2) The annual meeting of a parish council shall be held on or within fourteen days after the fifteenth day of April in every year.

(3) The first meeting of a parish council constituted after the commencement of this Act shall be convened by the chairman of the parish meeting at which the first parish councillors are nominated.

¹ See Chapter XVIII.

(4) A meeting of a parish council shall be open to the public unless the council otherwise directs.

(5) A meeting of a parish council shall not be held in premises licensed for the sale of intoxicating liquor, except in cases where no other suitable room is available for such meeting either free of charge or at a reasonable cost.

2.—(1) The chairman of a parish council may call a meeting of the council at any time.

(2) If the chairman refuses to call a meeting of the council after a requisition for that purpose, signed by two members of the council, has been presented to him, or if, without so refusing, the chairman does not call a meeting within seven days after such requisition has been presented to him, any two members of the council, on that refusal or on the expiration of those seven days, as the case may be, may forthwith convene a meeting of the council.

(3) Three clear days at least before a meeting of a parish council—

(a) notice of the time and place of the intended meeting shall be affixed in some conspicuous place in the parish, and where the meeting is called by members of the council the notice shall be signed by those members and shall specify the business proposed to be transacted thereat;

(b) a summons to attend the meeting specifying the business proposed to be transacted thereat and signed by the clerk of the council shall be left at or sent by post to the usual place of residence of every member of the council:

Provided that want of service of the summons on any member of the council shall not affect the validity of a meeting.

3.—(1) At a meeting of a parish council the chairman of the council, if present, shall preside.

(2) If the chairman of the council is absent from a meeting of the council, the vice-chairman of the council, if present, shall preside.

(3) If both the chairman and vice-chairman of the council are absent from a meeting of the council, such councillor as the members of the council present shall choose shall preside.

4. Subject to the provisions of Part V of this Schedule¹, no business shall be transacted at a meeting of a parish council unless at least one-third of the whole number of members of the council are present thereat:

Provided that in no case shall the quorum be less than three members.

5. The mode of voting at meetings of a parish council shall be by show of hands, and on the requisition of any member of the council the voting on any question shall be recorded so as to show whether each member present and voting gave his vote for or against that question.

¹ See Chapter XVIII.

PARISH MEETINGS

These are to be held in accordance with Sects. 77 and 78 of the Local Government Act, 1933, set out below—

77.—(1) Parish meetings shall be held, and the proceedings thereat shall be conducted, in accordance with the provisions of Part VI of the Third Schedule to this Act.

(2) The chairman of a parish council shall be entitled to attend a parish meeting for the parish whether he is or is not a local government elector for the parish, but, if not such an elector, he shall not be entitled to give any vote at the meeting except a casting vote.

78. Where a parish meeting is required or authorized to be held for a parish ward or other part of a parish, then—

(a) the persons entitled to attend and vote at the meeting, or to vote at any poll consequent thereon, shall be the local government electors registered in respect of qualifications in that parish ward or part of the parish; and

(b) the provisions of this Act with respect to parish meetings for the whole of a parish, including the provisions with respect to the convening of a parish meeting by local government electors, shall apply as if the parish ward or part of the parish were the whole parish.

SCHEDULE III

PART VI

1.—(1) The parish meeting of a rural parish shall assemble annually on some day between the first day of March and the first day of April, both inclusive, in every year.

(2) Subject as aforesaid, parish meetings shall be held on such days and at such times and places as may be fixed by the parish council, or, if there is no parish council, by the chairman of the parish meeting—

Provided that in a rural parish not having a separate parish council the parish meeting shall, subject to any provisions made by a grouping order, assemble at least twice in every year.

(3) The proceedings at a parish meeting shall not be commenced earlier than six o'clock in the evening.

(4) A parish meeting shall not be held in premises licensed for the sale of intoxicating liquor, except in cases where no other suitable room is available for such meeting either free of charge or at a reasonable cost.

2.—(1) A parish meeting may be convened by—

(a) the chairman of the parish council; or

(b) any two parish councillors; or

(c) in the case of a parish not having a parish council, the chairman of the parish meeting, or any person representing the parish on the rural district council; or

(d) any six local government electors for the parish.

(2) Not less than seven clear days before a parish meeting, public notice thereof shall be given specifying the time and place of the intended meeting and the business to be transacted thereat, and signed by the convener or conveners of the meeting:

Provided that if any business proposed to be transacted at a parish meeting relates to the establishment or dissolution of a parish council, or to the grouping of the parish with another parish, or to the adoption of any of the adoptive Acts, not less than fourteen days notice of the meeting shall be given.

(3) A public notice of a parish meeting shall be given—

(a) by affixing the same to or near the principal door of each church or chapel in the parish; and

(b) by posting the same in some conspicuous place or places in the parish; and

(c) in such other manner, if any, as appears to the persons convening the meeting to be desirable for giving publicity to the notice.

3.—(1) If the chairman of a parish council is present at a parish meeting for the parish, and is not a candidate for election thereat, he shall preside at the meeting.

(2) In a rural parish not having a separate parish council the chairman of the parish meeting shall preside over all assemblies of the parish meeting at which he is present.

(3) If the chairman of the parish council or the chairman of the parish meeting, as the case may be, is absent from or unable to take the chair at an assembly of the parish meeting, the parish meeting may appoint a person to take the chair, and that person shall have, for the purpose of that meeting, the powers and authority of the chairman.

4.—(1) A parish meeting may discuss parish affairs and pass resolutions thereon.

(2) Where a parish meeting is held for the election of parish councillors, opportunity shall be given at the meeting for putting questions to such of the candidates as are present, and receiving explanations from them, and any candidate shall be entitled to attend the meeting and speak thereat, but, unless he is a local government elector for the parish, shall not be entitled to vote.

5.—(1) Subject to the provisions of this Act, each local government elector may, at a parish meeting or at a poll consequent thereon, give one vote and no more on any question.

(2) A question to be decided by a parish meeting shall, in the first instance, be decided by the majority of those present at the meeting and voting thereon, and the decision of the person presiding at the meeting as to the result of the voting shall be final unless a poll is demanded thereon.

(3) In the case of an equality of votes the person presiding at the meeting shall have a second or a casting vote.

(4) A poll may be demanded, before the conclusion of a parish meeting, on any question arising thereat:

Provided that a poll shall not be taken unless either the person presiding at the meeting consents, or the poll is demanded by not less than five, or one-third of the local government electors present at the meeting, whichever is the less.

(5) A poll consequent on a parish meeting shall be taken by ballot in accordance with rules made by the Secretary of State under Sect. 54 of this Act, and the provisions of that section shall, subject to any adaptations made by those rules, apply in the case of a poll so taken as if it were a poll for the election of parish councillors.

6.—(1) Minutes of the proceedings of a parish meeting, or of a committee thereof, shall be drawn up and entered in a book provided for that purpose, and shall be signed at the same or the next ensuing assembly of the parish meeting, or meeting of the committee, as the case may be, by the person presiding thereat, and any minute purporting to be so signed shall be received in evidence without further proof.

(2) Until the contrary is proved, a parish meeting, or meeting of a committee thereof, in respect of the proceedings whereof a minute has been so made and signed shall be deemed to have been duly convened and held, and all the persons present at the meetings shall be deemed to have been duly qualified, and where the proceedings are proceedings of a committee, the committee shall be deemed to have been duly constituted and to have had power to deal with the matters referred to in the minutes.

7.—(1) Subject to the provisions of this Act, a parish council may make, vary, and revoke standing orders for the regulation of the proceedings and business at parish meetings for the parish.

(2) In a rural parish not having a separate parish council the parish meetings may, subject to the provisions of this Act, regulate their own proceedings and business.

SCHEDULE III

PART V

(applying to Local Authorities generally)

6. *Quorum in cases of disqualification.* Where more than one-third of the members of a local authority become disqualified at the same time then, until the number of members in office is increased to not less than two-thirds of the whole number of members of the local authority, the quorum of the local authority shall be determined by reference to the number of members of the local authority remaining qualified instead of by reference to the whole number of members of the local authority.

EDUCATION

The instrument of management for every county primary school serving an area in which there is a minor authority¹ must provide for the constitution of a body of managers consisting of such number of persons, not being less than six, as the local education authority may determine.

(Two-thirds of the managers are appointed by the local education authority and one-third by the minor authority.)

The instrument of management for every county primary school serving an area in which there is no minor authority must provide for the constitution of a body of managers constituted in such manner as the local education authority may determine.

The instrument of management for every voluntary primary school must provide for the constitution of a body of managers consisting of such number of persons, not being less than six, as the Minister of Education may, after consultation with the local education authority, determine.

(If the school is an aided school or a special agreement school two-thirds of the managers must be foundation managers, and, if the school is a controlled school, one-third of the managers must be foundation managers; where the school serves an area in which there is a minor authority, then of the managers who are not foundation managers not less than one-third nor more than one-half must be appointed by the minor authority and the remainder by the local education authority; and where the school serves an area in which there is no minor authority, all the managers who are not foundation managers must be appointed by the local education authority.)

The instrument of government for every county secondary school must provide for the constitution of a body of governors consisting of such number of persons appointed in such manner as the local education authority may determine.

The instrument of government for every voluntary secondary school must provide for the constitution of a body of governors of the school consisting of such number of persons as the Minister may, after consultation with the local education authority, determine.

¹ "Minor authority" means, in relation to any school maintained by the local education authority for a county, the council of any borough (other than a county borough) or urban district or rural parish which appears to the local education authority to be the area served by the school, so, however, that where it appears to the local education authority that the area served by the school is a rural parish which has no parish council, the parish meeting of that parish shall be the minor authority, and where it appears to the local education authority that a school serves the area of two or more minor authorities that expression shall be construed as referring to all those minor authorities acting jointly.

A Schedule to the Education Act sets out the following rules as to meetings and proceedings of managers and governors—

1. The quorum of the managers or governors shall not be less than three, or one-third of the whole number of managers or governors, whichever is the greater.

2. The proceedings of the managers or governors shall not be invalidated by any vacancy in their number or by any defect in the election, appointment or qualification of any manager or governor.

3. Every question to be determined at a meeting of the managers or governors shall be determined by a majority of the votes of the managers or governors present and voting on the question, and where there is an equal division of votes the chairman of the meeting shall have a second or casting vote.

4. The managers or governors shall hold a meeting at least once in every three months.

5. A meeting of the managers or governors may be convened by any two of their number.

6. The minutes of the proceedings of the managers or governors shall be kept in a book provided for the purpose.

(The minutes of the proceedings of the managers or governors of any county school or voluntary school shall be open to inspection by the local education authority.—Education Act, 1944, Sect. 21 (3)).

APPENDIX VI

SOME LEADING CASES

Arnot v. United African Lands, Ltd. (1901), 1 Ch. 518.
Court of Appeal.

The declaration of the chairman that a special resolution has been carried by a show of hands (a poll not being demanded) is absolutely conclusive in the absence of fraud.

The chairman had declared that resolutions for winding up the company and selling its assets had been duly carried. A minute to this effect had also been entered in the minute book. There was a good deal of confusion at the meeting and plaintiffs contended that the resolutions were not passed.

Held that the chairman's declaration was, under Sect. 51 of the 1862 Act (Sect. 69 of the 1908 Act, Sect. 77 of the 1948 Act), absolutely and not prima facie conclusive of the fact that the resolutions had been passed.

"Two questions are raised on this appeal. It is said that there is evidence which ought to induce the Court to come to the conclusion that the resolutions in favour of the scheme were not properly put to, or at any rate not duly passed by, the meeting . . . As the result of the whole evidence, I consider that Kekewich, J., has arrived at the right conclusion, namely, that the chairman did put to the meeting the resolutions, due notice of which had been given, and which had to be carried as special resolutions before the scheme could go on effectively, and that he did declare that those resolutions were carried and that, no poll having been demanded, an entry of that declaration was made in the books of the company. That being so, he must . . . hold that the direction of the chairman is conclusive that the resolutions were in fact duly passed." (Per Rigby, L.J.)

Automatic Self-Cleansing Filter Co., Ltd., v. Cuninghame (1906), 2 Ch. 34. *Court of Appeal.*

Directors invested with the general powers of the company by the articles cannot be divested of such powers by an ordinary resolution.

Article 96 of the company's regulations provided that

the management of the business and control of the company was to be vested in the directors but "subject, nevertheless, to the provisions of the statutes and of these presents, and to such regulations, not being inconsistent with these presents, as may from time to time be made by extraordinary resolution, but no regulation shall invalidate any prior act of the directors which would have been valid if such regulation had not been made." Article 97 specified special powers exercisable by the directors, and among these was one empowering them to sell or otherwise deal with any property of the company on such terms as they might think fit.

At a general meeting an ordinary resolution was passed by the shareholders for the sale of the company's assets to a new company and the directors were instructed to carry the same into effect. The directors, thinking that the sale was not for the company's benefit, declined to comply with these instructions.

Held that upon the construction of the articles the directors could not be compelled to comply with the resolution.

"The directors have absolute power to do all things other than those that are expressly required to be done by the company : and then comes the limitation on their general authority—'subject to such regulations as may from time to time be made by extraordinary resolution.' Therefore, if it is desired to alter the powers of the directors, that must be done, not by a resolution carried by a majority at an ordinary meeting of the company, but by an extraordinary resolution. In these circumstances it seems to me that it is not competent for the majority of the shareholders at an ordinary meeting to affect or alter the mandate originally given to the directors by the Articles of Association." (Per Collins, M.R.)

Bland v. Buchanan (1901), 2 K.B. 75. *Divisional Court. Darling and Channell, JJ.*

The chairman may give his casting vote contingently, to operate if there is an equality of votes.

At an election for the office of mayor, sixteen votes (including the vote of Newth) were given for Buchanan and fifteen for Bland. It was not certain whether Newth's vote was good and so the chairman (the Mayor) gave a casting vote for Buchanan. Sect. 61 (4) of the Municipal Corporations Act, 1882, gives the chairman a casting vote

if there is an "equality of votes." It was argued for Bland that there was no equality of votes, as there was a majority of one.

Held that the casting vote had been properly given, as equality of votes meant equality of valid votes.

"It is said, however, that the mayor could not give a contingent casting vote, and that a casting vote could only be given in case of there being an equality of persons who in fact voted. I do not think that is the meaning of the provision : I think that it means that a casting vote may be given by the mayor if the number of valid votes is equal, and I think that there may properly be a casting vote to take effect if the valid votes are equal, and not to take effect if they are not." (Per Darling, J.)

Burden v. Rigler and Another (1911), 1 K.B. 337. *Divisional Court. Lord Alverstone, C.J., Pickford, Avory, JJ.*

A meeting held on a highway is not necessarily an unlawful meeting.

Burden brought an action under the Public Meeting Act, 1908, against Rigler and Gibbs for that they "being persons at a lawful public meeting did unlawfully act in a disorderly manner for the purpose of preventing the transaction of the business for which the meeting was called together."

Burden had called a meeting to further Tariff Reform and the meeting was broken up. The justices had dismissed the case and held that the meeting being held on the highway was not a lawful public meeting within the Public Meeting Act, 1908. Burden appealed.

Held that the fact that a public meeting is held upon a highway does not necessarily make the meeting unlawful. Whether it is unlawful or not depends upon the circumstances in which it is held, e.g. whether or not an obstruction is caused.

Campbell v. Maund (1836), 5 A. & E. 865.

The right to demand a poll is by common law incidental to the election of a parish officer by show of hands, where there is no special custom to exclude it.

The question was whether Maund and Hobbs had been duly elected churchwardens of the parish of Paddington. Maund and Hobbs had been elected on a vote by show of hands, but a poll had been demanded by a ratepayer. Hill and Goodhind were declared elected. The mode of election

at Paddington had always been by show of hands, no poll ever having been demanded.

Held that the fact that no poll had ever been demanded did not show that the actual practice in Paddington excluded a poll. The election of Hill and Goodhind was therefore valid.

“ The question, therefore, becomes this : whether the right to demand a poll is by law incidental to the election of a parish officer by show of hands, where there is no special custom to exclude it. And we think such right is, in point of law, a necessary incident, or consequence, to the mode of election by show of hands, wherever it is not by special custom excluded. Independently of any authority upon the subject, the recourse to a poll, where the population of the parish is large, appears to be the only mode of ascertaining, with precision, the numbers of those who vote on each side, and the right of each elector to vote. Again, it is, under the same circumstances, the only mode by which each individual elector can have the power of expressing his opinion at all ; for, in the case of populous parishes, no vestry room can be large enough to contain the whole body. Still further . . . it is the only mode by which a large portion of the community can express their opinion with freedom and security.”
(Per Tindal, C.J.)

The Court read the following extract from the judgment in *Anthony v. Seger* : “ Where a poll is demanded, the election commences with it, as being the regular mode of popular elections : the show of hands being only a rude and imperfect declaration of the sentiments of the electors. It often happens that, on a show of hands, the person has a majority, who on a poll is lost in a minority ; and if parties could afterwards recur to the show of hands, there would be no certainty or regularity in elections. I am of opinion, therefore, that when a poll is demanded it is an abandonment of what has been done before, and that everything anterior is not of the substance of the election, nor to be so received.”

Cannan v. Trask (1875), 20 Eq. 669. *Bacon, V.C.*

Although the Court will not interfere with directors in the internal management of the Company, they will be restrained from fixing a particular date for the general meeting in order to prevent shareholders from voting.

The directors called an annual meeting for 3rd August,

earlier than usual, for the purpose of defeating the votes of Messrs. Elsworthy (the vendors of the business acquired by the company, Elsworthy & Co., Ltd.), who had transferred certain shares to nominees on 13th July. As the articles provided that only members registered for "one month previous to meeting" could vote, these nominees could not vote at the meeting convened for 3rd August.

The directors admitted this, but pleaded that they had always been in the habit of calling the meeting as soon as the accounts were ready.

Held that the directors should be restrained from holding the meeting before 13th August.

Caratal (New) Mines, Ltd., in re (1902), 2 Ch. 498.
Buckley, J.

The declaration of the chairman at a meeting called to pass a resolution under Sect. 81 of the 1862 Act (now Sect. 141 of the 1948 Act) is not conclusive if it shows on the face of it that it was not passed by the statutory majority.

At the first of the two meetings called to pass a special resolution the chairman said, on the resolution being submitted to a show of hands, "Those in favour, six; those against, twenty-three: but there are 200 voting by proxy, and I declare the resolutions carried as required by Act of Parliament."

Held that the declaration was not conclusive and the resolution was not properly carried.

"It has been held that, if the chairman by his declaration affirms erroneously or without sufficiently ascertaining the facts but *bona fide* that a resolution has been carried, the Court cannot go behind that declaration. Two cases establish that proposition, viz., *in re Hadleigh Castle Gold Mines, Ltd.*, and *Arnot v. United African Lands, Ltd.* In the latter case there was confusion at the meeting, but the Court came to the conclusion that the chairman had put the resolutions to the meeting properly and had declared them carried, and therefore declined to enter on an investigation as to what numbers voted for and against the resolutions. In the former case the meeting was a stormy one, and there was a considerable conflict of evidence as to what took place, and the Court refused to entertain the question whether the resolution was carried by the requisite majority. But those decisions do not apply to a case where the chairman, by his declaration, finds the figures and erroneously in point

of law holds that the declaration has been duly passed. That is what the chairman has done in the present case. He had no right to count the 200 votes by proxy, and his declaration is not conclusive." (Per Buckley, J.)

Channel Collieries Trust v. Dover, St. Margarets and Martin Mill Light Railway Co. (1914), 2 Ch. 506. *Court of Appeal.*

(1) *Although power to fill up casual vacancies is given to "the remaining directors" by Sect. 89 of the Companies Clauses Act, 1845, one director has power to act, although the quorum is two.*

(2) *The holding of the qualification required by Sect. 85 is a condition precedent to election as a director.*

(3) *One-twentieth of the share capital which must be held by shareholders to form a quorum under Sect. 72 means one-twentieth of the issued capital (so held by Sargant, J., in the Court below and not appealed against). (See 1914, 1 Ch. 568.)*

The Dover, St. Margarets, etc., Railway was incorporated by the Martin Mill Light Railways Order, confirmed by the Board of Trade, and incorporated the provisions of the Companies Clauses Act, 1845.

Sir John Jackson and two other directors were the board of directors, and on 21st April the two latter directors transferred their respective shares to the Channel Collieries Trust, Ltd., and ceased to be directors. In July Sir J. Jackson appointed A and B to be directors. A held one share, B held no shares, but at the same meeting twenty-four shares were allotted to A and twenty-five shares to B. The director's qualification was twenty-five shares.

In August the Channel Collieries Trust, Ltd., transferred twenty-five shares to C and twenty-five shares to D, but these transfers were not passed. The Channel Collieries Trust moved for an injunction to restrain A and B from acting as directors.

Held that Sir John Jackson had power under Sect. 89 to appoint the directors A and B, but as the shareholding was a condition precedent to election, they were not properly elected. The allotment, however, of the qualifying shares was good as an act done by *de facto* directors. Consequently, as Sir J. Jackson could and did intend to reappoint A and B as directors, it was nugatory to grant an injunction. C and D had a right to be registered as there was no objection on personal grounds.

Cook v. Ward (1877), 2 C.P.D. 255. *Court of Appeal.*

A committee may not apportion amongst themselves duties delegated to them as a body, but their powers must be exercised jointly.

The constitution of a board constituted by Act of Parliament, in this case the Land Drainage Act, 1861, provided that "the board may delegate any of their powers to committees consisting of such member or members of their body as they think fit. Any committee so formed shall, in the exercise of the powers delegated, conform to any regulations that may be imposed on them by the board."

The Board resolved "That Mr. R. Ward, Mr. S. Andrews, and Mr. Charles Plowright be appointed a committee to act in any case of emergency, with all the powers conferred by the provisional order, 15th May, 1873, on such committee." The 8th clause of the rules provided that "a committee may meet and adjourn as they think proper. Questions at any meeting shall be determined by a majority of votes of the members present; and, in case of an equal division of votes, the chairman shall have a second or casting vote." The three members of the committee agreed between themselves that the work of superintending a certain dyke should be divided, each member taking a section. Ward cut through the gateways leading to Cook's land, the tunnels thereunder being too small to take the overflow. Cook contended that this proceeding was unauthorized by the statute, as it was not the act of the three committeemen.

Held that Cook was entitled to judgment with costs.

"Neither the rules, the provisional order, nor the resolution appointing the committee confer upon them the power of acting otherwise than in concert. Being a plural body, they must conform to the regulations which govern all such bodies, and must act according to the provisions of the 8th clause, which manifestly contemplates the bringing together of the whole of the members of the committee in order that they may exercise a joint judgment in each case. . . . The committee, it seems, met and agreed that the part of the drain in question should be dealt with exclusively by the defendant. That was, in effect, the committee assuming to clothe the defendant, a member of their body, with a power which the board alone could clothe him with. It was not competent to them to delegate powers which required the united action of the three, to be exercised

according to the unaided judgment of one of them.”
(Per Lord Coleridge, C.J.)

Cornwall and Pain v. Woods (1846), 4 Notes of Cases (Ecclesiastical and Maritime Courts), 555. *Sir H. Jenner Fust.*

An objection to the appointment of the chairman should be made at once.

Cornwall, one of the churchwardens, at a vestry meeting held to make a rate, proposed that the Rev. John Bluck, a parishioner, should take the chair. The motion was not seconded or objected to, but the meeting acquiesced. Accordingly Mr. Bluck took the chair. Six ratepayers voted in favour of the rate, eleven voted against it. Mr. Bluck declared the rate duly carried. In reply to objections the chairman observed, “I am the chairman. I am to declare the numbers.”

Held that the rate was not vitiated by irregularities at the meeting at which the rate was made in the appointment of the chairman, or by wrong announcement of the numbers.

“Why did not the party opposed to the rate demand a poll? If they did not, they must submit to the declaration of the chairman, which is a *prima facie* decision that the majority were in favour of the rate. The party had three modes of proceeding, and he resorted to neither. If the chairman was in error, the party should have called for a division or a poll.” (Per Sir H. Jenner Fust.)

Doyle v. Falconer (1866), L.R., 1 P.C. 328.

Persons who disturb a meeting may be removed by the use of reasonable force.

A member of the Lower House of Assembly of Dominica had been taken into custody by the Serjeant-at-Arms and committed to gaol by virtue of the Speaker’s warrant, for contempt. He had addressed the Speaker in the terms, “You are a disgrace to this House,” and also obstructed the business of the House. He brought an action for trespass and false imprisonment.

Held by the Judicial Committee of the Privy Council that the House of Assembly had no such power to commit and punish, and that the Speaker and Members were liable.

“The learned counsel for the appellants (the Speaker and ten other members of the House of Assembly)

invoked the principles of the Common Law, and as it must be conceded that the Common Law sanctions the exercise of the prerogative by which the Assembly has been created, the principle of the Common Law, 'Quando lex aliquid concedit, concedere videtur et illud, sine quo res ipsa esse non potest,' applies to the body so created. . . . It is necessary to distinguish between a power to punish for a contempt, which is a judicial power, and a power to remove any obstruction offered to the deliberations or proper action of a Legislative body during its sitting, which last power is necessary for self-preservation. If a Member of a Colonial House of Assembly is guilty of disorderly conduct in the House, whilst sitting, he may be removed or excluded for a time, or even expelled, but there is a great difference between such powers and the judicial powers of inflicting a penal sentence for the offence. The right to remove for self-security is one thing, the right to inflict punishment is another. The former is, in their Lordship's judgment, all that is warranted by the legal maxim that has been cited. . . . If the good sense and conduct of the members of Colonial Legislatures prove, as in the present case, insufficient to secure order and security of debate, the law would sanction the use of that degree of force which might be necessary to remove the person offending from the place of meeting, and to keep him excluded. The same rule would apply, *a fortiori*, to obstructions caused by any person not a member. And whereas the violation of order amounts to a breach of the peace, or other legal offence, recourse may be had to the ordinary tribunals." (Per Sir J. N. Colvile.)

Cf. **Booth v. Arnold** (1895), 1 Q.B. 571.

"The power of amotion for reasonable cause is incident to every corporation, unless it has been taken away by statute." (Lopes, L.J.)

East v. Bennett Brothers, Ltd. (1911), 1 Ch. 163. *Warrington, J.*

Where a meeting of one class of shareholders is convened and the whole of the shares of that particular class are held by one shareholder, the latter can constitute a meeting.

The articles provided that no new shares should be created to rank equally with or in priority to the preference shares without the sanction of an extraordinary resolution

of the preference shareholders at a "meeting" convened for the purpose. Bennett held all the preference shares. An extraordinary meeting of the company was held at which Bennett presided. He proposed and another shareholder seconded a resolution that the capital should be increased by the creation of new preference and ordinary shares to rank equally with existing shares. On the same day Bennett signed, in the company's minute book, a document in the following terms—

"I, the undersigned, Joseph Bennett, Jun., hereby record my consent as the holder of all the preference shares issued by Bennett Bros., Ltd., to the increase by the company of its capital [here followed details of new shares to be created]. Such preference shares to rank *pari passu* in all respects with the preference shares held by me."

The Court was asked to decide whether the new shares had been validly created.

Held that the new shares had been validly created.

"Where one person is the holder of all the shares of a particular class, and as that person cannot meet himself, or form a meeting with himself, in the ordinary sense, the persons who framed the memorandum having such a position in contemplation must be taken to have used the word 'meeting' not in the strict sense, but as including the case of a single shareholder. There is, of course, no difficulty in treating the formally expressed assent of Bennett as a resolution." (Per Warrington, J.)

Ernest v. Loma Gold Mines, Ltd. (1897), 1 Ch. 1.
Court of Appeal.

Proxies can only be counted at a poll.

A special resolution had been passed for voluntary liquidation, and it was sought to set aside the resolution on two grounds: (1) that the chairman, on a show of hands, had refused to count the votes of those present by proxy; (2) that at a subsequent meeting, when a poll was taken, the chairman had improperly accepted certain proxies in which the date and hour of the meeting had been filled in by the secretary, these particulars having been omitted through a printer's error. The articles provided "Votes may be given either personally or by proxy. The instrument appointing a proxy shall be in writing in the common form, and under the hand of the appointor, or if such appointor be a corporation under their common seal."

Held by Chitty, J., (1) that a member present only by proxy had no right to vote upon a show of hands; (2) that as the members returning the proxies in compliance with a circular (from the company asking for the return of the proxy) must have intended them to be used at the particular meeting, the proxies were valid and duly stamped within the provisions of the Stamp Act, 1881, Sect. 80. Decision confirmed by the Court of Appeal, overruling *in re* Bidwell Brothers.

"If the member holds up his hand it counts as one. There is no other method of counting practically possible. He does not vote according to his voting power. The man may have 10,000 or 100,000 shares, but he is only counted as one on the show of hands." (Per Chitty, J.)

"*In re* Bidwell Brothers, Vaughan Williams, J., however, decided that on a show of hands, absent members entitled to vote by proxy ought to be counted as present if their proxy is himself present and votes. *We agree that this is true if the proxy is a non-member and represents only one person—namely, the absentee for whom he votes.*" (Per Lindley, L.J.)

Express Engineering Works, Ltd., in re (1920), 1 Ch. 466. *Court of Appeal.*

A company is bound in a matter intra vires by the unanimous agreement of its members.

At the first board meeting of the company it was decided to buy certain property from the five and only shareholders of the company, who were all present at the meeting and had previously been elected directors. It was further resolved to issue debentures to the five persons and these were issued at a subsequent meeting. The articles provided that a director might contract with and be interested in any contract or arrangement with the company, but no director should, as a director, vote in respect of any contract or arrangement in which he might be interested. The company was wound up and the liquidator asked for a declaration that the issue of debentures was invalid.

Held that the debentures had been properly issued.

"It was said here that the meeting was a directors' meeting, but it might well be considered a general meeting of the company, for although it was referred to in the minutes as a board meeting, yet if the five persons present had said 'we will now constitute this a general meeting' it would have been within their powers so to

do, and it appears to me that that was in fact what they did." (Per Lord Sterndale, M.R.)

"In my opinion the true view is that if you have all the shareholders present, then all the requirements in connection with a meeting of the company are observed, and every competent resolution passed for which no further formality is required by statute becomes binding on the company." (Per Younger, L.J.)

Gardner v. Iredale (1912), 1 Ch. 700. *Farwell, J.*

The notice convening the statutory meeting of a registered company must state that it is the statutory meeting.

The Torquay Electric Theatre, Ltd., a private company, was incorporated on 3rd January, 1911, and held two general meetings, (1) 30th January, 1911, to pass a special resolution increasing its capital, and (2) 14th February, 1911, to confirm the special resolution. The meeting of 30th January was held too soon to constitute the statutory meeting, being less than one month from the date the company was entitled to commence business (*viz.*, 3rd January). The notice convening the meeting of 14th February only specified the business to be the confirming of the special resolution.

Held by Parker, J., that the February meeting could not be regarded as the statutory meeting, as the notice did not expressly state that it was to be the statutory meeting. Consequently, the company, not having held this meeting, was liable to be wound up compulsorily, and the action, brought for specific performance of a contract to buy shares and which the purchaser had refused to complete, failed.

Gibson v. Barton (1875), 10 Q.B. 329. *Divisional Court. Blackburn, Lush, Quain, JJ.*

The year in Sect. 49 of the Companies Act, 1862 (now Sect. 124 of the 1948 Act) means the period of time commencing on 1st January and ending on 31st December, and not the twelve months commencing from date of registration of company.

Gibson, the secretary of the company, reported at a board meeting, held in 1872, that he had called a general meeting of the shareholders, and in 1874 he stated that unless certain contracts were carried out he should feel it his duty to summon a general meeting of the shareholders. No ordinary general meeting had been held in 1873, and no list of shareholders had been forwarded to the registrar.

The secretary had not taken any steps to cause a meeting to be held in 1873.

He was convicted on the information charging him, as manager, with authorizing a default in forwarding a copy of the list of shareholders.

Held by Blackburn and Lush, JJ. (Quain, J., dissenting), that Gibson was manager *de facto* and therefore a manager within Sect. 26 (of the Companies Act, 1862), and that, as he took no steps in 1873 to call a meeting and thereby made it impossible for him to forward a list of members, there was evidence that he had knowingly and wilfully authorized a default within Sect. 27 of the Companies Act, 1862.

"A meeting is to be called by order of the directors and not by any individual person : but cannot a director or a manager be guilty of wilfully authorizing or permitting a default by the company ? I think that he can. I think it is a question of fact whether they have or not ; but I think if a man is allowed to manage the company, so that *de facto* he can get a meeting called when he likes, and he does not show that he ever made the attempt to call a meeting, it is some evidence that he has knowingly and wilfully (that is the question of fact for the justices) permitted default in calling the meeting, the meeting being necessary as a condition precedent before a list of members could be sent." (Per Blackburn, J.)

Greymouth-Point Elizabeth Railway and Coal Company, Ltd., in re (1904), 1 Ch. 32. *Farwell, J.*

A quorum of directors means a quorum competent to transact and vote on the business before the meeting.

The articles of the company provided that any director might enter into a contract or be interested in any business with the company, that no director should vote on any matter relating to the contract or business in which he was interested, and that two directors should form a quorum.

Held as above stated.

"In the present case there were three directors present, and I take it they voted for giving debenture security to two of themselves in consideration of a large sum of money then owing to the two directors and a small sum of money then advanced or to be advanced. . . . The two directors were not capable of voting on the question and, therefore, there was no quorum." (Per Farwell, J.)

Hackney Pavilion, Ltd., in re (1924), 1 Ch. 276. *Astbury, J.*
Where the personal representative of a deceased shareholder

has a right to be registered as a member, subject to the directors' right to refuse, the directors must pass a formal resolution of refusal. In default, the request of the personal representative takes effect.

The directors had the right under the company's articles to decline or suspend registration as a member of the personal representative of a deceased member. A shareholder died and his widow proved the will. Her solicitor then sent to the company a transfer of the deceased proprietor's shares from herself as executrix to herself in her individual capacity. There were two directors present at the board meeting at which this transfer came up for registration. One director proposed that the transfer should be passed, the second director objected. As there was no casting vote by the articles, no resolution was passed. The secretary, under instructions, returned the papers to the solicitor. The widow applied for an order for rectification of the register by inserting her name in the register in place of the deceased proprietor.

Held that the register should be rectified.

"The right to decline must be actively exercised by a vote of the board *ad hoc*. At the actual board meeting there was a proper quorum, but as the board was equally divided, it did not and could not exercise its right to decline. Nothing was or could be done in the matter. The mere failure to pass the resolution for registration proposed by Rose (one director) and opposed by Kramer (the other director) was not a formal exercise of the right to decline. . . . The applicant's absolute right to registration, therefore, remains intact, and the register must be rectified accordingly." (Per Astbury, J.)

Harben v. Phillips (1883), 23 Ch.D. 14. *Court of Appeal.*

Where proxies must by the articles be attested, the attestation is imperative and not directory.

The articles of the company provided that proxy papers should be attested by one or more witness or witnesses, Article 68 stating—

68. Any instrument appointing a proxy shall be in the following form. (Here followed a form concluding with a form of attestation "Signed by the said — in the presence of —.")

At a general meeting of the company certain amendments were carried by show of hands, and polls were demanded. The scrutineers' report stated that a large number of the

proxies were unattested. The chairman admitted the unattested proxies, and in consequence certain resolutions were declared to be carried. Harben, in conjunction with other shareholders, asked for an order declaring that these resolutions had not been carried.

Held that the unattested proxies should have been rejected by the chairman.

"It was not contended that its (the proxy's) being in writing was merely directory, and Mr. Benjamin admitted that writing was essential to prevent the frauds which might be practised if a mere oral nomination would properly appoint a proxy. In my opinion the attestation is as essential, and as much a thing agreed upon by the parties as being of the essence of the paper, as its being in writing, or its being left at the office a certain time before the beginning of the meeting." (Per Cotton, L.J.)

Hooper v. Kerr Stuart & Co., Ltd. (1900), 83 L.T. 729. *Cozens-Hardy, J.*

An unauthorized notice convening a general meeting, issued by the secretary, if subsequently ratified by the directors, is a valid notice.

An extraordinary general meeting having been requisitioned by the shareholders calling upon the directors to convene it, the secretary convened it on his own authority. The meeting was convened for the purpose of removing Hooper, a director, between whom and the other directors there were differences of opinion. The notice was issued by the secretary on the 10th December. On the 13th December, Hooper issued a writ asking for an injunction to prevent the meeting being held. On the 14th December, the directors met and ratified the action of the secretary.

Held that on ratification the notice became good for all purposes.

Horbury Bridge Coal, Iron, and Waggon Company, in re (1879), 11 Ch.D. 109. *Court of Appeal.*

(1) *Voting at a meeting, unless a poll is demanded, is decided by the common law mode of voting, viz., by show of hands.*

(2) *There is no law of the land that at a meeting a motion cannot be put unless seconded.*

At a meeting called to pass an extraordinary resolution to wind up, it was proposed and seconded that Kippax

should be appointed liquidator. An amendment was moved, but not seconded, that Masterman should be appointed. Three of the five persons present, holding together fifty shares, voted for the amendment, the other two, holding sixty-five shares, voted against it. The chairman then put the original motion, for which the two shareholders holding sixty-five shares voted, but the other three shareholders voted against it. No poll was demanded, but the voting was by show of hands.

The question for the Court was whether Kippax or Masterman had been appointed liquidator.

Held (reversing Bacon, V.C.), that a poll not having been demanded the voting was by show of hands, without counting shares, and that Masterman was elected.

"Is there any law of the land that at a meeting of shareholders a motion cannot be put unless it is seconded? I am not aware of any. No doubt it is the practice of the House of Commons." (Per James, L.J.)

"And that practice is commonly followed at meetings. . . . I think that the objection that the amendment was not seconded cannot prevail, it being admitted that it was put and voted upon." (Per Jessel, M.R.)

Huth v. Clarke (1890), 25 Q.B.D. 391. *Lord Coleridge, C.J., Wills, J.*

Delegation by an executive committee to a sub-committee of certain powers is not an abandonment of such powers which may always be resumed.

"Delegation, as the word is generally used, does not imply a parting with powers by the person who grants the delegation, but points rather to the conferring of an authority to do things which otherwise that person would have to do himself." (Wills, J.)

"The word 'delegation' implies that powers are committed to another person or body which are as a rule always subject to resumption by the power delegating. . . . Unless, therefore, it is controlled by statute, the delegating power can at any time resume its authority." (Coleridge, L.C.J.)

Isle of Wight Railway Company v. Tahourdin (1883), 25 Ch.D. 327. *Court of Appeal.*

(1) *Omission by directors in the notice convening a requisitioned meeting of any of the valid objects for which the*

meeting has been requisitioned, entitles the requisitionists themselves to call a meeting ;

(2) A general meeting can remove directors under Sect. 91 of the Companies Clauses Act, 1845, and fill up vacancies.

Certain shareholders who had power to requisition a meeting did so pursuant to Sect. 70 of the Companies Clauses Act, 1845. The notice stated two separate objects : (1) to appoint a committee to investigate and to require the directors to carry out the recommendations of the committee ; (2) to remove, if expedient, any of the directors and to fill up the vacancies.

The directors sent out a notice calling the meeting solely " for the purpose of considering and determining upon a demand of the requisitionists for the appointment of a committee to inquire into the working and general management of the company, and the means of reducing the working expenses."

Under Sect. 69 the meeting cannot enter upon any business not set forth in the notice. Consequently the notice sent by directors having omitted all reference to the removal of directors (on the ground that this was beyond the committee's powers), the requisitionists ignored the meeting and called one on their own account.

The directors sought to restrain the holding of this second meeting.

Held that the requisitionists were entitled to call the meeting.

" If the object of a requisition to call a meeting were such that in no manner and by no machinery could it be legally carried into effect, the directors would be justified in refusing to act upon it. But if the object stated in the requisition be such that by any form of resolution or by any machinery sanctioned by the Act, it can be carried into effect, then it is the bounden duty of the directors to call the meeting." (Per Fry, L.J.)

Kaye v. Croydon Tramways Co. (1898), 1 Ch. 358. *Court of Appeal.*

The notice convening a meeting to consider resolutions for the sale of the company's undertaking must disclose any proposals to compensate the officials of the company. A reference in an accompanying circular is not sufficient.

The Croydon Tramway Co. convened a meeting of the proprietors to consider resolutions for the sale of its undertaking to the British Electric Traction Co. The notice

stated that the meeting was called "for the purpose of considering, and, if thought advisable, of approving the terms of an agreement between the Croydon Tramways Co., Ltd., and the British Electric Traction Co., being an agreement for the sale of the undertaking and assets of the Croydon Tramways Co. to the British Electric Traction Co." Nothing was said as to compensation to be paid to the directors and the secretary by the purchasing company, but in an accompanying circular it was stated "the directors and the secretary have agreed to retire on being paid a lump sum as compensation for their loss of office." The Croydon Company, being governed by the Companies Clauses Act, 1845, it was necessary that the notice should "specify the purpose for which the meeting is called."

Held that the notice and circular did not sufficiently inform the shareholders, and an injunction was granted from carrying the agreement into effect until properly sanctioned by a general meeting.

"I am perfectly alive to the danger of putting into notices, especially notices by advertisement, more than the Act of Parliament requires, and I agree that all that the Act of Parliament requires is that the purpose shall be stated. But it must be stated fairly; it must not be stated so as to mislead; and one of the main purposes of this agreement, so far as the directors care about it, is that they shall get a large sum of money without disclosing the fact to their shareholders. I do not think that this notice discloses the purpose for which the meeting is convened. It is not a notice disclosing that purpose fairly, and in a sense not to mislead those to whom it is addressed." (Per Lindley, M.R.)

[His Lordship also referred to the circular which he thought was sent out in order to get proxies quite as much as to give additional information to the shareholders, and was not a full and fair disclosure of what was proposed to be done.]

Kelantan Coco Nut Estates, Limited and Reduced, in re (1920), W.N. 274. *Astbury, J.*

The representative of a corporate member of a company can be counted in the quorum of a general meeting.

The articles of the company provided that "two members personally present shall be a quorum." At the confirmatory meeting, held to pass a special resolution reducing the capital, two persons were present, one a shareholder and

one a representative of the Eastern Development Corporation, Ltd., which held shares in the company.

Held that there was an effective quorum as the representative of the corporate shareholders appointed under Sect. 68 could be included, and that the meeting being duly constituted, the special resolution was properly passed.

Lucas v. Mason (1874), L.R. 10 Ex. 251. *Bramwell, Cleasby, and Pollock, BB.*

The chairman may be liable for damage resulting from his instructions to remove a disturber of the meeting.

The plaintiff was in the gallery of a large hall where there was a meeting of the Church Liberation Association. Defendant was the chairman. There was an interruption in the gallery near to the place where plaintiff was standing, and defendant said, "I shall be obliged to bring those men to the front who are making the disturbance. Bring those men to the front." Plaintiff was making no disturbance but he was seized by a man with a white ribbon in his coat, and two policemen, and dragged over some benches and thereby injured. There was nothing to show the position or duty of those who seized him, or whether any instructions as to keeping order had been given them by the defendant, before the act complained of. The plaintiff in action for assault was non-suited, and on appeal the non-suit was upheld on the ground that there was not the ordinary relation of master and servant between defendant and those who assaulted the plaintiff, but only a particular direction as to a particular matter, and that the words used by the defendant did not authorize the officers to act upon their judgment as to who were the persons making the disturbance.

"If, therefore, any liability attached to the defendant it must be in consequence of the general relationship which existed between the defendant and those who brought the plaintiff forward, or because his order to bring the disturbers to the front, meant 'Determine who are disturbers, and when you have done so, bring forward those whom you determine to be disturbers.' Under these circumstances it becomes necessary to consider whether there was any evidence to show that the defendant's order had that meaning, or would reasonably be so understood by those to whom he gave it, and whether upon any principle of law, the defendant could be made liable in this action. Where the trespass complained of is the direct and necessary consequence of an order given

for its committal, the person who gives the order is clearly liable for the consequences, as much as if the trespass were done by his own hand; and where the relation of master and servant exists the former is liable for the tortious acts of the latter, wherever they are, such as come within the scope of the servant's general duty, although, in doing the particular act complained of, he may have exceeded his authority, provided what he does is in the honest belief that he is executing his master's orders; for in most cases where a duty is to be performed, or an act done by a servant, some discretion must be vested in him to whom the doing of it is committed, and where this is so, the master cannot enjoy the benefit of his servant's acts, which involve this discretion without being responsible for their result." (Per Pollock, B.)

MacConnell v. E. Prill & Co., Ltd. (1916), 2 Ch. 57. *Sargant, J.*

An extraordinary resolution must comply with Sect. 141 of the 1948 Act by "specifying the intention to propose the resolution as an extraordinary resolution." The notice should also state the specific increase intended to be made to the capital.

The articles of the company provided that the directors might, with the sanction of an extraordinary resolution of the company, increase its capital.

A notice was sent out to shareholders stating—

[Name and Address of Co.]

"You are kindly requested to attend an extraordinary general meeting to be held at the above address on Friday, 25th February, 1916, at 12 noon. Agenda: To pass resolution to increase capital of the company."

Held by Sargant, J., that "shareholders should be protected in matters of this kind by specific notice of what is intended to be done," and that "the very precise language of Sect. 69¹ of the Act of 1908 requires in the case of an extraordinary resolution that the notice shall specify the intention to propose the resolution as an extraordinary resolution." (See also *re Oxted Motor Co. Ltd.*, *post*, p.224.)

McLaren v. Thomson (1917), 2 Ch. 261. *Court of Appeal.*
Where the articles provide that proxies must be deposited "before the day for holding the meeting at which the person

¹ Now Sect. 141 of the 1948 Act.

named in such instrument proposes to vote," proxies lodged subsequently before an adjourned meeting are not available.

The general meeting of a company was fixed for 30th December, but, owing to the accounts not being ready, was formally held and then adjourned until 24th January.

On 23rd December, McLaren gave notice of his intention to propose resolutions (*inter alia*) appointing himself and two others as directors, and on 27th December he lodged proxies. On 19th January, he lodged further proxies which the secretary acknowledged, but stated they ought to have been lodged two days before the original meeting.

At the adjourned meeting, held on 24th January, Pennington was re-elected, and Shaw and the two others were also elected as directors.

If the second set of proxies lodged on 19th January were out of order Pennington was not re-elected but Shaw and the others were elected.

Held (following *Scadding v. Lorant*) that the second set of proxies to be available at the adjourned meeting should have been deposited in time for use at the original meeting.

"Although other articles may provide, and commonly now do provide, for proxies being available for an adjourned meeting, yet with articles framed such as these the proxies intended for use at an adjourned meeting must be deposited in time for use at the original meeting, and it is not sufficient to deposit them after the date of the original meeting although it may be two clear days before the date of the adjourned meeting." (Per Swinfen Eady, L.J.)

This decision is overruled by Sect. 136 (3) of the Companies Act, 1948.

McMillan v. Le Roi Mining Co. (1906), 1 Ch. 331. *Joyce, J.*

Shareholders or their proxies must attend and vote personally at a poll unless the articles provide that voting papers may be sent by post.

The articles of the company provided that a poll should be taken "in such manner and at such time and place as the chairman of the meeting directs." The chairman at a general meeting directed that a poll should be taken by means of polling papers signed by the shareholders and returned to the company's office within a certain time.

Held that voting by polling papers sent by post was not authorized by the articles which required the shareholders

to vote either personally or by proxy. The company was not entitled to enlarge the power of voting (as by voting by means of voting papers sent by post) and were accordingly restrained from acting on the result of the poll.

Mawley v. Barbet and Others (1799), 2 Esp. 687. *King's Bench.*

The acts of one vestry are not absolutely binding on a succeeding vestry, and they may be confirmed or rescinded by such succeeding vestry. But the confirmation of the succeeding vestry is not necessary to make the acts of a preceding one valid.

A vestry had been held at St. Pancras on 10th April, and churchwardens, Mawley and others, were elected. The defendants contended that owing to wrongful method of voting a new election had been ordered at a subsequent vestry meeting held on 29th May. At this meeting defendants were elected.

Held that Mawley and others were elected.

"The second objection is that the nomination of the plaintiffs as churchwardens on the 10th of April was rescinded, and a new election ordered, it being stated to be the usual way of proceeding at those vestries to read over at the next meeting the resolutions of the preceding one, and to confirm or rescind them. I am of opinion that they had no such power, and that there is no necessity for the confirmation of the second vestry of what was legally done at the first. If the first was a legal vestry (and nothing appears here to impeach it) the election of the plaintiffs was legal : the plaintiffs became immediately legal officers." (Per Lord Kenyon.)

Mercantile Investment and General Trust Co. v. International Company of Mexico (1893), 1 Ch. 484 *note*.

Fourteen days' notice by advertisement means fourteen clear days, i.e. the day on which the advertisement appears and the day of the meeting must be excluded.

The trust deed securing debentures issued by the International Company of Mexico provided for "at least fourteen days" notice to be given of any meeting.

Notice was given of a debenture holders' meeting, by advertisement, on 23rd September, calling a meeting for 8th October. It was argued that the notice ought not to be held to have been given on 23rd September because it probably could not or would not reach the debenture holders for some time afterwards.

Held that to give effect to this contention would render

it impossible to calculate the period of fourteen days, that fourteen days' notice meant fourteen clear days, and that the notice was good as there were fourteen clear days between 23rd September and 8th October.

Mozley v. Alston (1847), 1 Ch. 790. *Cottenham, L.J.*

A suit by individual shareholders, complaining of an injury to the corporation, cannot be maintained if the plaintiffs have the means of procuring a suit to be instituted by the corporation.

Proceedings were taken by two shareholders in the Birmingham and Oxford Junction Railway Company against the directors, alleging that twelve of the original directors ought to have "balloted out four of their number in order that four others might be elected in their stead." They omitted to do so and it was contended that these twelve directors should be restrained from acting as directors. The Court was also asked to order these directors to hand over the seal and books to six new directors appointed at a general meeting.

Held that proceedings should be taken by the corporation, whether the act complained of be voidable by a majority of the shareholders or illegal and incapable of being confirmed.

"The complaint against the defendants is that they are illegally exercising the powers of directors, and illegally retaining the seal and property of the company. That, if it be an injury at all, it is an injury not to the plaintiffs personally, but to the corporation of which they are members—a usurpation of the office of directors and, therefore, an invasion of the rights of the corporation; and yet no reason is assigned by the bill why the corporation does not put itself in motion to seek a remedy."

National Dwellings Society v. Sykes (1894), 3 Ch. 159. *Chitty, J.*

It is the duty of a chairman to preserve order, conduct proceedings regularly, and take care that the sense of the meeting is properly ascertained with regard to any question before it, but he has no power to stop or adjourn a meeting at his own will; and if he purports to do so, it is competent for the meeting to resolve to go on with the business for which it has been convened, and to appoint another chairman for that object.

At a general meeting Sykes, the chairman, moved "That the report and accounts be received." This was duly

seconded. An amendment that a committee of investigation be appointed to ascertain the position of the company was moved and seconded, but ruled out of order by the chairman under the advice of the solicitor. The chairman then submitted the original motion, and there being six votes in favour and twenty-eight against, he said, "I declare the resolution to be lost and I dissolve the meeting." He left the chair, although other business, election of directors and auditors, had not been disposed of. The shareholders appointed another shareholder to be chairman and other resolutions were passed.

Held that their action was justified.

"In my opinion he (the chairman) cannot say, after the meeting has been opened, 'I will have no more to do with it; I will not let this meeting proceed; I will stop it; I declare the meeting dissolved, and I leave the chair.' In my opinion, that is not within his power. The meeting by itself . . . can resolve to go on with the business for which it has been convened, and appoint a chairman to conduct the business which the other chairman, forgetful of his duty or violating his duty, has tried to stop because the proceedings have taken a turn which he himself does not like." (Per Chitty, J.)

Oxted Motor Co., Ltd., in re (1921), 3 K.B. 32. *Divisional Court. Lush, Greer, JJ.*

If all the shareholders are present at a meeting they can agree to waive the statutory formalities of Sect. 141 of the 1948 Act as to notice of intention to propose a resolution as an extraordinary resolution.

A creditor obtained judgment against the company, a private company. On the same day the only shareholders, two in number, met together and passed an extraordinary resolution that the company could not by reason of its liabilities continue its business and accordingly that the company be wound up.

The liquidators appealing against a decision of the Croydon Court contended that the winding up resolution was invalid.

Held that all the shareholders being present they could waive the formality of notice.

"It is said that in the case of an extraordinary resolution the Legislature has made it imperative that the notice required by Sect. 69 [of the 1908 Act] should be given in order to give an opportunity for the shareholders

to consider whether the resolution should be passed, and that it is not competent to waive that formality. I cannot see any reason why shareholders should not be able to do in that case what they can do in any other case. In the absence of fraud I think that shareholders can waive notice in this case just as freely as they could in *in re Express Engineering Works*." (Per Lush, J.) (See *MacConnell v. Prill*, *supra* p. 220.)

Parsons v. Sursey (1867), 4 F. & F 247. *Court of Queen's Bench. Cockburn, C.J.*

Defamatory statements made at a meeting to which reporters have been expressly invited by the speaker are not privileged.

A shareholder of a railway company summoned a meeting of shareholders to which he invited others, including reporters. At the meeting he declared that the chairman had purchased land which he knew the company would require (the company had given notice to buy, and could have purchased for £2,000), and had then caused a claim to be sent in for £20,000, thus benefiting himself at the expense of the company.

Held that it was not a privileged occasion because others besides the shareholders were specially invited by defendant to attend. Accordingly plaintiff recovered £25 as damages.

Peel v. London & North-Western Railway Co. (1907), 1 Ch. 5. *Court of Appeal.*

It is the duty of directors to inform shareholders of their policy, and they are justified in trying to influence and secure votes, expenses bona fide incurred being properly payable out of the company's funds.

There was a controversy between certain large stockholders, represented by Peel, and the directors as to the management of the company. The directors, before the half-yearly meeting, issued a circular to stockholders, also stamped proxy papers for use at the meeting with the names of the chairman and two directors as proposed proxies printed thereon, and also a stamped envelope for return of the proxies when signed. Some of the district goods managers were also instructed to canvass for votes of stockholders residing in their districts.

Held that the directors had properly discharged their duty to the stockholders and expenses incurred were properly payable by the company.

"As a general principle it cannot be *ultra vires* to use

the company's funds *bona fide* and reasonably for the purpose of obtaining the best expression of the voice of the corporators in general meeting." (Per Buckley, L.J.)¹

Pittard v. Oliver (1891), 1 Q.B. 474. *Court of Appeal.*

Defamatory statements made at a meeting where reporters are present not by express invitation of the speaker are privileged.

At a meeting of a board of guardians, of which plaintiff was the clerk, defendant, who was vicar of the parish, used defamatory language (*bona fide* and believing it to be true) concerning the plaintiff to the effect that he had been "robbing public money."

The plaintiff, as clerk to the guardians, received from time to time, and accounted to the guardians for, various sums of money. He contended that on balance money was due to him. He sued for and recovered this balance and then brought legal proceedings against the vicar for slander.

It appears that at the meeting reporters were present according to the regular custom.

Held that the occasion was privileged and that the privilege was not taken away because reporters were present at the meeting.

"If the words had been spoken at a meeting where only guardians were present, it is not denied that the occasion would be privileged, and the privilege would attach upon the ground that it was his duty to make the statement if he believed it to be true. As a fact, there were other persons than guardians present at the meeting; but it was not shown that those other persons were not ratepayers: if they were ratepayers, they were persons in whose interest the guardians were discussing the question, and the question arises whether their presence would take away the privilege. It is asserted that it would: but the ratepayers were obviously persons interested in the payment of this money out of the rate, and I cannot for a moment doubt that the privilege was not taken away by their presence. But I will assume that the persons present, in addition to the guardians, were not ratepayers: it is suggested that they were reporters: but if that were so, it would in my opinion make no difference. If a person whose duty it is to make a statement to certain persons calls in other persons to whom he owes no duty to make the statement, in order

¹ See note on page 98

that those other persons may hear it, I should be inclined to say (though it is unnecessary to the decision of the present case) that it would not become his duty to refrain from making his statement to the proper persons, but that there would be evidence of malice in his making it in the presence of others who might promulgate it. In the present case it must be assumed that the defendant did not call in the reporters, for it is not suggested that he did. What, then, was his position? He could not order them out of the room, for there were several guardians present, and we must assume that the reporters were allowed to be present by the guardians as a body, over whose acts the defendant had no control; he could not prevent the reporters being present. Was then his duty to the guardians and to the ratepayers generally taken away by the presence of those other persons who were not called in by him and over whose presence he could exercise no control? The question answers itself: the presence of those persons left his duty to discuss the matter untouched; the occasion was privileged for the performance of that duty, and the privilege was not taken away by the presence of such people under such circumstances. I think, therefore, that the learned judge was right in ruling that this was a privileged occasion." (Per Lord Esher, M.R.)

Regina v. D'Oyly (1840), 12 A. & E. 139. *Queen's Bench. Lord Denman, C.J.*

It devolves upon the chairman to preserve order and to regulate proceedings at the meeting so as to give all persons entitled a reasonable opportunity of voting. He is the person to grant a poll and may adjourn the meeting against the wishes of the majority, but he is legally responsible if the adjournment "improperly disturbs the proceedings."

At a vestry meeting to elect churchwardens, a poll was demanded and the rector, who presided, ordered it to be held at the close of the other business and continued for three days at a time and place of which notice had previously been given. A majority at the meeting dissented.

Held that the poll was rightly taken.

"A poll is then demanded: and it is demandable as of right: and the president of the meeting is the person to grant it. In the absence of other business, the poll should be taken immediately: if time does not allow of that, there must be an adjournment for the purpose.

Then, who is to direct the adjournment? It is suggested that a majority of the voters should do so. But how is the majority to be ascertained in so large a constituency? And what is the situation of parties if the majority present decide against adjournment so as to leave no time for a considerable part of the ratepayers to vote? Setting aside the inconvenience that might arise if a majority of the parishioners could determine the point of adjournment, we think that the person who presides at the meeting is the proper individual to decide this. It is on him that it devolves both to preserve order in the meeting and to regulate the proceedings so as to give all persons entitled a reasonable opportunity of voting. He is to do the acts necessary for the purposes on his own responsibility, and subject to the being called upon to answer for his conduct if he has done anything improperly." (Per Lord Denman, C.J.)

Regina v. Overseers of Christchurch (1857), 7 E. & B. 409.
Court of Queen's Bench. Wightman, J.

Where an act is to be done by a majority of those present, persons present who do not vote must be counted.

The vestry of the parish of Christchurch, Middlesex, by its constituent Act could do "or the major part of such of them as shall be assembled at such meetings" could do whatever could be done by an ordinary vestry. By a subsequent Act power was given to the vestry "or the major part of them" to appoint or dismiss collectors of the poor rate. Baynton was appointed a collector. A charge being brought against him, a meeting of the vestry, which consisted of eighty persons, was convened, and thirty-five were present. On the motion to dismiss Baynton sixteen voted for and eleven voted against the resolution. Baynton was accordingly dismissed.

Held that the motion, not being carried by a majority of those present, was not carried by a majority of those assembled, the vestrymen declining to vote not being considered in point of law absent.

"It was necessary that a majority of those present at a vestry meeting called for the purpose of considering his conduct should concur in voting for his removal, to render it valid, and that members actually present, but taking no part, could not on that account be considered absent; and consequently that there was not a majority of the vestrymen present at the meeting concurring in the removal of Baynton." (Per Wightman, J.)

Royal Aquarium and Summer and Winter Garden Society, Ltd., v. Parkinson (1892), C.A. (1 Q.B. 443).
Court of Appeal.

Defamatory statements made at a meeting are privileged unless the speaker is abusing the occasion.

At a meeting of the London County Council the granting of a music and dancing licence to the plaintiff was considered and Parkinson, a member of the Council, urged that it should not be granted. He commented strongly on an alleged indecent performance which he had witnessed.

The plaintiff sued for damages for slander. It was contended on behalf of Parkinson (1) that he was exercising a judicial function when he used the words complained of, and was therefore entitled to absolute immunity. (2) That the meeting was a privileged occasion.

Held (1) that the meeting was not within the rule by which defamatory statements made before a Court are absolutely privileged; (2) that the meeting was a privileged occasion; (3) that he had spoken with malice and so could not claim privilege.

Defendant's appeal against the judgment for £250 damages, given in the Court below, was dismissed.

"In respect of statements made in the course of proceedings before a Court of Justice, whether by judge, or counsel, or witnesses, there is an absolute immunity from liability to an action. The ground of that rule is public policy. It is applicable to all kinds of courts of justice; but the doctrine has been carried further; and it seems that this immunity applies wherever there is an authorized inquiry which, though not before a court of justice, is before a tribunal which has similar attributes," e.g. a military court of inquiry. (Per Lord Esher, M.R.)

"Whereas in this case, a body of persons are engaged in the performance of the duty imposed upon them, of deciding a matter of public administration, which interests not themselves, but the parties concerned, and the public, it seems to me clear that the occasion is privileged. Therefore, though what is said amounts to a slander, it is privileged, provided the person who utters it is acting *bona fide*, in the sense that he is using the privileged occasion for the proper purpose and is not abusing it. It is sometimes said that he must be acting *bona fide* and not maliciously; but I do not think that that way of expressing the rule is quite exhaustive or correct. I think the question is whether he is using the

occasion honestly or abusing it. If a person on such an occasion states what he knows to be untrue, no one ever doubted that he would be abusing the occasion. The jury here appear to have thought that the defendant said what was false, knowing it to be false. I cannot agree with that view of the case. If the case depended on a finding to that effect, I should be very loth to find it. But there is a state of mind, short of deliberate falsehood, by reason of which a person may properly be held by a jury to have abused the occasion, and in that sense to have spoken maliciously. If a person from anger or some other wrong motive, has allowed his mind to get into such a state as to make him cast aspersions on other people, reckless whether they are true or false, it has been held, and I think rightly held, that a jury is justified in finding that he has abused the occasion." (Per Lord Esher, M.R.)

Salisbury Gold Mining Co., Ltd., v. Hathorn (1897), A.C. 268. *House of Lords.*

A provision in the articles that "the chairman may, with the consent of the members present at any meeting, adjourn the same" means that the chairman is not bound to adjourn a meeting, even though a majority of those present desire the adjournment. The adjournment is to be his act, not that of the meeting.

"It is to be his act, not that of the meeting or of those present at it. He cannot, it is true, adjourn it of his own mere motion, but the terms in which the members present are given a controlling voice strengthens the view that the adjournment is to be the act of the chairman. It provides for the 'consent' of the members present, which implies that the act is not theirs, but his." (Lord Herschell.)

Scadding v. Lorant (1851), 3 H.L.C. 418. *House of Lords.*

Where notice of the purpose of a vestry meeting has been duly given and that meeting has begun but not completed a certain business, and the meeting is regularly adjourned, such business may lawfully be completed at the adjourned meeting, though the notice for summoning such adjourned meeting does not state the purpose for which it is summoned.

"We think it was sufficient to give notice on the church door of the purpose for which the first meeting

was to assemble, and that that notice extended to all the adjourned meetings, such adjourned meetings being for the purpose of completing the unfinished business of the previous meetings, and all being a continuation of the first meeting." (Pollock, L.C.B.)

Sharp v. Dawes (1876), 2 Q.B.D. 27. *Court of Appeal.*
One shareholder cannot constitute a meeting.

A meeting of a company was held to sanction a call, but one shareholder only attended besides the secretary, Sharp, who was not a shareholder. The shareholder held all the proxies of the other shareholders, took the chair, passed a resolution making the call, and concluded with a vote of thanks to himself as chairman.

Action was brought by the company in the name of the secretary against the defendant, a shareholder, to enforce the call.

Held that the call was invalid, not having been made at a "meeting" of the company within the Stannaries Act, 1869.

"In this case no doubt a meeting was duly summoned, but only one shareholder attended. It is clear that, according to the ordinary use of the English language, a meeting could no more be constituted by one person than a meeting could have been constituted if no shareholder at all had attended. No business could be done at such a meeting, and the call is invalid." (Per Mellish, L.J.)

(See *East v. Bennett Bros., Ltd.*, ante p. 209.)

Shaw v. Tati Concessions, Ltd. (1913), 1 Ch. 292. *Swinfen Eady, J.*

The fixing of a poll for a future date, the meeting itself not being adjourned, is not an adjournment of the meeting so as to allow proxies to be lodged forty-eight hours before the meeting or "adjourned meeting."

The articles provided that proxies must be deposited "not less than forty-eight hours before the time for holding the meeting or adjourned meeting, as the case may be," at which the proxy was to vote.

The company held its annual meeting on 20th December, and the directors, not anticipating any opposition, had not obtained any proxies. Shaw and Walker lodged proxies representing a large number of votes, and at the meeting an amendment was moved by them that the report and

accounts be received but not adopted. This amendment being lost on a show of hands, a poll was demanded, and the chairman directed it to be taken on 31st January. The meeting then closed. The directors in the interval asked for *proxies* and obtained proxies representing 99,245 votes. Shaw, on behalf of himself and the other shareholders, asked for an order to prevent the directors from using these proxies. The chairman, in his affidavit, stated that "the meeting was adjourned for the purpose of taking the poll and for no other purpose." The plaintiff contended that the meeting was not adjourned.

Held that there had been no resolution for adjournment, and that the taking of a poll was not a meeting. The directors' proxies were, therefore, not available.

"The true legal position is this. There is no adjourned meeting, but the original meeting continues for the purpose of taking the poll until the poll is closed." (Per Swinfen Eady, J.)

Sly, Spink & Co., in re (1911), 2 Ch. 430. *Neville, J.*

Where the articles provided for a minimum number of directors and for a quorum less than that minimum number, the minimum number of directors must be elected before a quorum can act.

The articles of the company provided that the number of directors should not be less than four or more than eight, also that three directors should form a quorum. The articles also provided that the first directors who were named in the articles could appoint any other persons to be directors. There was also an article enabling continuing directors to act notwithstanding any vacancy in their body, but if their number was reduced below the quorum, the continuing directors could act for the purpose of increasing their number or of summoning a general meeting.

The two first directors appointed a third and the board thereupon allotted shares.

Held by Neville, J., that there never was a properly constituted board, inasmuch as there were never more than three directors. The allotment could not be justified because the directors formed a quorum or because they were continuing directors.

"You must have a board of four before there can be a quorum. Saying that the quorum shall be three seems to me to be quite a different thing from saying that three directors can act as a board when the articles themselves

provide that the number of directors shall be not less than four." (Per Neville, J.)

Smedley v. Registrar of Companies (1919), 1 K.B. 97. *Divisional Court. Darling, Coleridge, Avory, JJ.*

Sect. 131 creates two offences, (1) not holding the meeting in the calendar year; (2) not holding it within fifteen months after the last meeting.

An information was laid against Smedley, a director of the Lyceum Club International, Ltd., on 18th June, 1918, for not holding a general meeting of the company as required by Sect. 64 of the 1908 Act¹, in the calendar year 1917. The last general meeting was held on 21st March, 1916. Smedley appealed against the conviction on the ground that the offence was committed at the expiration of fifteen months after 21st March, 1916, and that the information should have been laid within six months after that date.

Held by Darling and Lord Coleridge, Avory, J., dissenting, that the appeal should be dismissed. Sect. 64 creates two separate offences, (1) not holding a meeting in the calendar year; (2) not holding it within fifteen months after the last meeting.

Although fifteen months may have elapsed from the date of the last meeting, the directors have the whole of the calendar year (in this case 1917) in which to hold the general meeting for that year. The six months within which proceedings for non-compliance could be started therefore ran from 31st December, 1917, and the institution of proceedings was in time being within six months after the commission of the offence.

Smyth v. Darley (1849), 2 H.L.C. 789. *House of Lords.*

Shareholders are entitled to receive notices of meeting, if within reasonable summoning distance, and the omission to give notice invalidates acts done at the meeting in his absence.

The election of treasurer for Dublin was vested in the "board of magistrates of the county of the said city" and by statute it had to take place at the Sessions Court by vote of the magistrates present.

The Recorder of Dublin, who was entitled to attend, had not been summoned.

Held that the election, which had taken place in his absence, was invalid.

"The special verdict finds that he was not present at

¹ Now Sect. 131 of 1948 Act.

the election of the plaintiff, and that he was not convened or summoned to attend at the said election. The election being by a definite body on a day of which, till summons, the electors had no notice, they were all entitled to be specially summoned, and, if there was any omission to summon any of them, unless they all happened to be present, or unless those not summoned were beyond summoning distance—as, for instance, abroad—there could not be a good electoral assembly; and even a unanimous election by those who did attend would be void.” (Per Campbell, L.C.)

Stoughton v. Reynolds (1735), 2 Strange 1,044. *Lord Hardwick, C. J.*

The right of adjourning a vestry is in the parish at large, that is, in the assembly itself.

The vicar nominated Chapman and the parishioners nominated Stoughton to be churchwardens. On Easter Monday, 1735, a vestry was held for the election. The vicar presided and nominated Chapman, but before the election was completed and all had polled the vicar, at the desire of Chapman, declared the meeting to be adjourned and left. Stoughton and his supporters remained and continued the poll by which Stoughton was elected. Next day the vicar, Chapman, and his supporters, attended and the poll was continued, with the result that Farren was elected.

Held that Stoughton was duly elected, as the right of adjournment was in the parish at large. Consequently the vicar had acted wrongly in adjourning the meeting, which was properly continued, and so Stoughton was duly elected.

“The power must arise from the custom or common law. Here is no custom found, and I know of no book that shows how it stands at common law. . . . Is the right of adjourning in the churchwardens? There is no case for that: though if there was, this is found to be the act of one only. We must, therefore, resort to the common right which is in the whole assembly, where all are upon an equal foot.” (Per Hardwick, C.J.)

Taurine Co., in re (1884), 25 Ch.D. 118. *Court of Appeal.*

A committee of a board of directors need not consist of more than one person.

“There is nothing, in my opinion, in the articles to prevent the appointment of a committee of one. It is

very unusual, but still it may be done. As was pointed out, Table A recognizes the fact that one person may be appointed a committee. A committee means a person or persons to whom powers are committed which would otherwise be exercised by another body." (Cotton, L.J.)

Taylor v. Nesfield (1855), Wills on Parish Vestries, 29n.

Persons attending a meeting invest the chairman with the power of regulating themselves individually.

Facts not reported. Jervis, C.J., stated in this case, tried in 1854—

"There is not, as far as I know, any case which has ever arisen to guide us in deciding how far the powers of a chairman extend. . . . Public meetings must be regulated somehow; and where a number of persons assemble and put a man in the chair, they devolve upon him by agreement the conduct of that body. They *attorn* to him, as it were, and give him the whole power of regulating themselves individually. This is within reasonable bounds. The chairman collects, as it were, his authority from the meeting. In a meeting of colliers, for example, the chairman could not expect them to alter their feelings or modes of expression, and must represent and adjust himself to the feelings of the men who delegate their several authority to him."

Wall v. Exchange Investment Corporation, Ltd. (1926).

1 Ch. 143. *Court of Appeal.*

Where the articles provide that objections to the validity of votes must be made at the meeting, and that every vote not disallowed should be deemed valid, the bona fide decision of the chairman is final.

Meetings were held to pass a special resolution for voluntary liquidation. At the first meeting the chairman had to consider a proxy for 292 shares given to the chairman by Timmis, who held a power of attorney from his mother who was registered holder of the shares. Wall, at the meeting, took exception to the 292 votes on the ground that the power of attorney did not authorize voting by proxy. The chairman refused to disallow the votes which therefore, under Article 58 of the articles of association, were valid.

Article 58 provided that "no objection shall be made to the validity of any vote excepting at the meeting at which

such vote shall be tendered, or at the meeting (if any) to which such meeting shall be adjourned in the regular course of business, and every vote, whether given in person or by proxy, not disallowed at any one of such meetings, shall be deemed valid for all purposes whatsoever."

Held that the decision of the chairman who, in the *bona fide* exercise of the power conferred on him by the articles, had refused to disallow a vote by proxy to which objection had been taken at the meeting, was final and could not be reviewed by the Court.

"Here all that is done is to take away from a shareholder a right of appeal against a decision disallowing an objection by him against the votes of some other shareholder, and it seems to me quite reasonable that such a question should be allowed to be decided summarily and finally by the chairman, although there should not be the same summary and final effect given to a decision against the right of a shareholder to vote." (Per Sargant, L.J.)

West London Railway Co. v. Barnard (1843), 3 Q.B. 873.

Minutes of a statutory company meeting must be signed by "the chairman of such meeting" (Sect. 98, Companies Clauses Act, 1845), but may be signed by him at a subsequent meeting.

The statute by which the West London Railway Co. was incorporated enacted that the proceedings of all meetings of the company should be entered in a book and "signed by the chairman of such respective meetings."

To prove the authority for making certain calls the company, in an action against Barnard for non-payment, produced the minute book. It contained an entry dated 18th August, 1836, and headed "Minutes of Meeting, etc." after which came resolutions, including one "Resolved that a call of £2 per share be made upon the proprietors, payable, etc."

Under this entry was written, in a different hand, "Confirmed, 24th August, 1836, W. Gunston."

Gunston appeared, by a former minute, to have been chairman on the 18th, and he was also chairman on the 24th, when the next meeting took place.

It was argued for Barnard that there was no proper signature as the minutes of the meeting of 18th August should have been signed at the meeting, and cited Patterson, J., in *Reg. v. Mayor of Evesham*.

"The words of the Act (5 and 6 Will. IV, c. 76, s. 69).

imply that the minutes shall be drawn up at the time of the meeting, and signed at that time."

Held that the signature of the chairman at the subsequent meeting was sufficient, as he presided when the proceedings took place.

"These minutes are subscribed by the person who was chairman when the proceedings took place. The signature is none the worse because he signs as chairman of a subsequent meeting." (Per Coleridge, J.)

Wooding v. Oxley (1839), 9 C. and P. 1. *Court of Common Pleas. Bosanquet, J.*

Annoyance and disturbance by crying "Hear, Hear," and putting questions to a speaker, and making observations on his statements, will not justify the chairman in giving the offenders in charge to the police. To justify such a course it must be shown that what was done amounted to a breach of the peace.

The plaintiff attended a meeting of a temperance society at which the defendant was chairman. About 200 persons were present. There was some disturbance and a policeman was summoned by the Secretary of the Society. The defendant met him outside and desired him to follow him into the room. The defendant pointed out the plaintiff and another person and said: "These two gentlemen have been creating a disturbance the whole of the evening, and I give them in charge." The policeman demurred, whereupon the defendant insisted and the alleged disturbers of the meeting voluntarily accompanied the policeman to the station. The charge was subsequently dismissed by the magistrate.

The action was brought by the plaintiff against the defendant for causing him to be imprisoned without reasonable or probable cause.

Held that in order to find a verdict for the defendant there must be evidence that what was done by the plaintiff amounted to a breach of the peace. Judgment was accordingly given for the plaintiff.

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