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BUSINESS ENCYCLOPÆDIA
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AND
LEGAL ADVISER

BY

W. S. M. KNIGHT

OF THE INNER TEMPLE, BARRISTER-AT-LAW

WITH A SERIES OF STATISTICAL ARTICLES
AND EXPLANATORY DIAGRAMS BY
JOHN HOLT SCHOOLING

NUMEROUS ILLUSTRATIONS, BUSINESS FORMS, CHARTS, &c.

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THE
BUSINESS ENCYCLOPÆDIA

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CONTRACT.—To the man of business this is one of the most important subjects to which he can give his attention, and it is of like importance to all who have any sort of place or share in modern commercial activity. Not only to those who regard the subject from the business or material point of view is it interesting, but to the scientific and speculative mind it may even be fascinating. The position and importance of contract in modern life may be well appreciated upon a consideration of the formula in which a distinguished philosopher has summed up the characteristics of social development—that the modern social system is based upon contract, whilst primitive society was based upon status. The meaning of this is, that in primitive societies—those in which the social functions are developed but to a limited extent—the rights and obligations of men and women are regulated almost entirely by their position in life: a slave may be said to have no rights, but to be always under a universal obligation to obey the commands of his master for the time being; a king or chief may probably have all rights, and only be under such obligations as for the time being some superior power may impose upon him; a man may be born into a certain priestly, warlike, or learned caste, the cast-iron rules of which he is bound to observe, and out of which he cannot move; a tradesman may be born as such, the son of a man exercising a like trade and the father of a child who by social convention will be bound in his turn to carry on the same trade also. In all these cases the rights and obligations of men are fixed by society without regard to their individual inclinations, the same as were those of their fathers, the same as will be those of their sons. The individual may be in effect almost a chattel of the society of which he is a member, as a wife, until very recent years, was in England almost a chattel of her husband. On the other hand, in societies civilised in the modern sense of the word, the individual is left as free as possible. No longer is his family, clan, or tribe the social unit, and its general rules and customs such that he is considered to have no legal existence apart from it; his liberty is conditioned only by an equal liberty possessed by others. And it is this liberty that finds its expression in contract—in the voluntary agreement between individuals to create mutual rights and obligations or to vary or limit those already in existence, with the intention that such an agreement shall be enforced, if necessary, by some absolutely effective power. For this reason, therefore, may modern society be said to be based upon contract—upon the liberty

possessed by every individual to enter into enforceable agreements; and this principle of liberty—of freedom of contract—stands firmly as the foundation of our commercial law. We will now consider the subject more particularly, and for this purpose it will be convenient to discuss first the nature of contract, then its formation, operation, and interpretation, and finally the modes of its discharge. The subject, however, is too extensive, and at the same time too precise, for very adequate treatment within the limits of such a work as this. Its outlines alone can be here presented to the reader, who if desirous of a more exact knowledge should consult such a work as Sir William Anson's *Principles of the English Law of Contract.* A work of this nature is not for the lawyer alone, but equally for the man of general education and culture.

Its Nature.—There has been a great deal of learned discussion upon the nature of contract—too much and too abstruse to be of interest to the general reader. We will accordingly adopt the definition of Sir William Anson, premising, however, that the fact that there are different definitions need not cause a lack of confidence in the one we present, for the differences, except to the academic and theoretical lawyer, are practically immaterial. The following is the definition :—

A contract is an agreement enforceable at law, made between two or more persons, by which rights are acquired by one or more to acts or forbearances on the part of the other or others.

From this it will be seen that the basis of a contract is an agreement—not any agreement, but one which the law will enforce. There may be made an agreement to pay a commission to an agent for negotiating a marriage, but since the law would decline to enforce payment, the agreement therefor would not be a contract. Again, an agreement necessitates at least two parties to it; accordingly a mere offer to the public of a reward would not constitute an agreement until some person had placed himself in a position to claim the reward. Finally, the parties to the agreement must contemplate the creation of some mutual rights and obligations. Thus A. may agree to pay B. the sum of £100, in consideration of which B. agrees to transfer certain shares to A. Here the agreement imposes upon A. the obligation to pay £100 and upon B. the obligation to transfer the shares to A.; and therewith are created in the favour of A. a right to compel B. to deliver the shares, and in favour of B. a right to compel A. to make the payment.

Its Formation—*Offer and acceptance.*—Generally speaking, all contracts will be found to be primarily based upon an offer and its acceptance. Indeed, in all cases where it is doubtful whether an agreement between the parties has been arrived at, a useful practical test may be: has there been an offer which has been accepted? Neither offer nor acceptance need be made in writing, nor even by words; the conduct of the parties may be sufficient. This is subject, however, to exception in cases where writing or other formality is specially required by the law, and which cases will be referred to later on. The offer need not be made to any particular individual; it may be made to all the world. Thus, about seventeen years ago the Carbolic Smoke Ball Company advertised an offer to pay £100 to any one who might

contract a cold after having used one of their specialities in accordance with their printed directions, and the advertisement stated that £1000 had been deposited with a bank as a proof of the *bonâ fides* of the offer. A lady used the article according to the directions, but subsequently contracted a cold. She then sued the company for the promised reward, and her claim was resisted on the ground that she had not notified to the company her acceptance of the offer. The Court held, however, that the company was liable, as the performance of the conditions of the offer was a sufficient acceptance without any special notification thereof. In the same way the person who furnishes the information for which a reward is publicly advertised thereby becomes entitled to payment.

It is sometimes doubtful whether certain particular words in question do really constitute an offer. Not every set of words is an offer. The whole of the circumstances in which they are written or uttered may obviously negative the suggestion of an offer, and it is consequently in cases where they are nearly an offer but not quite, or apparently *vice versâ*, that doubt arises. Thus the words may be merely a statement of intention, as where an auctioneer advertises a sale for a certain date; or a person announces that he will accept tenders for certain goods, but does not say that he will accept the highest bidder; or, generally, where merely an invitation is made or probabilities announced. In such cases there would be no offer.

An offer must be communicated to the other party to the agreement.—This, on the face of it, would seem to be an obvious necessity, and a formality insisted upon and its terms thoroughly understood by the party to whom the offer is made. But in the present state of complex business activity a great number of contracts are made by the delivery by one of the contracting parties to the other of a document in common form, stating the terms by which the person delivering it will enter into the proposed contract. Such a form constitutes the offer of the party who tenders it, and how often does the party receiving it either altogether fail to notice its terms, or negligently disregard them, or even believe that they have no binding effect upon him! And yet, if the form is accepted without objection by the party to whom it is tendered, he is, as a general rule, bound by its contents, and his act amounts to an acceptance of the offer made to him, whether he reads the document or otherwise informs himself of its contents or not. Every day examples of an offer thus thrust upon the party receiving a document are found in a railway ticket, a receipt for goods by a carrier, and a bill of lading.

Revocation of offer.—Until acceptance, an offer may always be revoked or withdrawn; and apart from specific revocation or withdrawal, it may lapse. An offer may lapse as a result of the death of either party, or because there is no acceptance within the time prescribed by the offer, or because the acceptance has been made in a form or manner other than that prescribed, or by the efflux of a reasonable time. A revocation in order to be valid must be communicated to the other party in the same way as the offer has been; for until such communication has been effected, the other party is entitled to accept. Should the offer have been made under seal it is irrevocable, except so far as the document containing the offer provides for a revocation.

Acceptance.—It follows from the above, that until the offer has been revoked the person to whom it is made is entitled to accept it. And here it should be noticed that the acceptance is complete, and binding upon both parties, directly it is made. The receipt by the "offeror" of the acceptance is not a condition precedent to the formation of the contract. In this respect an acceptance differs from a revocation—and this difference cannot be too strongly insisted upon, and pointed out to the reader; for, as we have already seen, the acceptance is complete, and the contract complete, directly the acceptance is made, without regard to whether or no the offeror has received or heard of it; whilst the revocation entirely depends for its validity upon the fact of its being brought to the knowledge of the party to whom the offer has been made. Revocation by lapse does not need any communication; it operates conclusively by the circumstances themselves which cause the lapse.

To constitute a contract, *the acceptance of an offer must be precise and without ambiguity;* though apart from cases where the contract is required by law to be in writing, or where the offer imposes a form to which the acceptance must comply, the acceptance may be either by words or by conduct. Thus if A. asks B. to sell to him a certain watch for £5, and B. consents, a contract is created, and both A. and B. must perform their respective obligations thereunder. If B. had said, "I will sell it to you for £5, 10s.," there would have been no contract, for B.'s answer would not have been an absolute and unqualified acceptance. It often happens that goods are sent by mistake to a person who takes them in, uses them, and frequently declines to pay upon the ground that he did not order them. But notwithstanding any argument on those or similarly specious lines, the law will, under such circumstances, recognise a valid contract between the parties; the person who sent the goods will be taken to have sent them with an implied offer for their sale at their proper price, and the person receiving them will be held to have definitely accepted that offer, by accepting and using the goods. But this case must not be taken as an illustration of a general rule that "silence gives consent"—*silence, or acquiescence, can only give consent when, as in the foregoing case, an opportunity is afforded for rejection.* It naturally follows, from what has already been said, that merely making up one's mind to accept is insufficient to create a contract unless the acceptance is communicated. One Felthouse wrote to his nephew offering to buy his horse for £35, 10s., concluding with the words: "If I hear no more about him I shall consider the horse as mine at £35, 10s." The nephew, though deciding in his own mind to sell the horse, did not communicate to his uncle his acceptance of the offer. The Court held that in the absence of such a communication there was no contract for sale.

Upon reference to the *Carbolic Smoke Ball* case, to which we have already referred on page 2, it will be seen that it is sufficient if the acceptance of an offer is made in a manner indicated or prescribed by the offeror; and that this is so, even though the prescribed manner obviates the necessity of an actual communication. It is often an important question whether an acceptance has been made in the requisite manner. Where A. wrote to B. to the effect that he was willing to guarantee any advances made by B. to C., and B. thereupon lent some money to C. without first informing A. that he

would accept his guarantee, it was held that B. could not recover against A. as guarantor, because he had not communicated to A. his acceptance of the offer of the guarantee, and that therefore no contract of suretyship had been created. The moral of such a case is that every one who receives an offer should ponder carefully its nature and terms, in order to discover whether an express communication of the acceptance is necessary. Perhaps the best course in business would be to make a general rule of expressly and precisely accepting every offer which is received, and which is intended to be accepted.

In the above case of the guarantee, the lender of the money thought that he had sufficiently accepted the offer by merely performing its condition. Had he so thought and acted correctly, then the manner requisite for acceptance would have been adopted. But there are other manners or modes of acceptance than that of performance of an act. As business is carried on to-day, the most usual manners or modes of, or channels for, acceptance are: speech, by writing through a messenger or the post, or by telegram. If the offer is made verbally, the manner of acceptance may be assumed to be verbal also.

Acceptance through the Post.—But the post-office is the ordinary mode of communication, and every person who gives any one the right to communicate with him, gives the right to communicate in the ordinary manner. The case of *Adams and Lindsell* may be here instructively referred to. By letter dated the 2nd September 1817, Lindsell offered to sell certain wool to Adams, requesting an answer "in course of post." Through the letter being misdirected, it was not until the 5th that it was received by Adams, who on the evening of the same day posted a letter to Lindsell accepting the offer. But Lindsell not knowing of the misdirection of the letter, and thinking that Adams had decided not to close with his offer, had in the meanwhile sold the wool to some one else. It was held that the contract had been completed, and that Lindsell must sell the wool to Adams, or pay damages. It is thus seen that until an offer has been revoked—provided, of course, that the time which has elapsed is not of unreasonable duration—it is open to acceptance in the manner suggested by the offer. If this were not the rule, no contract could ever be completed by the post. The acceptance is complete directly the letter is posted. In one case a letter of acceptance was posted a few hours earlier than a letter revoking the offer; but it was held, consistently with the above rule, that the contract was completed, beyond possibility of revocation, directly the letter of acceptance had been posted. In another case the letter of acceptance was lost in the course of the post, and never reached the offeror; but the contract was complete notwithstanding the loss of the letter, for posting it is equivalent to putting it into the hands of a messenger sent by the offeror himself as his own agent to deliver the offer and receive the acceptance. The fact that the offeror's own agent should lose the letter, or otherwise fail to properly perform his duty to his employer, would not be allowed to prejudice the acceptor of the offer.

Form of Contract.—The parties to the contract having been brought together by an offer and its acceptance, the next point for their consideration will be the form which the contract shall take. Form has generally always, and everywhere, been a most important incident in a contract—very fre-

quently more important than the subject-matter itself of the contract. In England, until the consideration for a contract began to claim some respect, an executory contract—one in which something remains to be done—was not binding unless it was clothed with a certain formality, namely, executed under seal as a DEED (*q.v.*). And so we shall presently see there are still many and most important instances in which some special formality is required—that the contract should be by deed, or in writing, or in some particular form prescribed by statute. Of formal contracts, in the strict sense of the word, there may be said to be two classes—*Contracts under Seal*, to which reference is made elsewhere under the title Deed; and Contracts of Record.

A contract must be under seal in order to support an agreement for which there is no consideration. Such an agreement would be one containing a gratuitous promise, or a promise for which the promisor receives no consideration present or future. A. owes B. £50, and B., thinking that £25 is all A. can now or is ever likely to be able to afford, writes a letter to him offering to give a receipt in full discharge of the £50 if A. will pay him £25 at once. A. promptly accepts the offer, pays the £25 in cash, and receives from B. a receipt therefor in writing, and which receipt is expressed to be in full satisfaction and discharge of the debt, and contains an agreement or promise by B. not to claim the balance. But A. one day becomes rich, and B. promptly sues him for the £25 balance. It will be of no avail for A. to plead that B had forgiven him that balance, or for him to produce the receipt in support of his plea. There having been no consideration for B.'s promise, he may disregard it. But if his promise had been under seal, B. would have been bound to stand by it. A debtor who is compounding with his creditors must be careful, therefore, to take the receipts under seal.

From the above alone, one might be inclined to think that though made by the law to serve a use, yet the necessity for a seal is, after all, in itself a relic of ignorant times. But such a view would be a great mistake. In the case, for example, of a corporation such as a joint-stock company or a municipal corporation, the seal is the only authentic evidence of what it has done or agreed to do, and is the only form under which it can contract. The resolution of a meeting, however numerously attended, is after all not the act of the whole body. But every member knows he is bound by what is done under the common seal, and by nothing else. Either a seal, or some substitute for a seal, which by law shall be taken as conclusively evidencing the sense of the whole body corporate, is a necessity inherent in the very nature of a corporation. But even to this rule there are exceptions, for where the contract of a corporation relates to matters of everyday necessity, and of small importance, the seal is not necessary. Thus a corporation may order its coals, employ or discharge a labourer, sell articles in the ordinary course of its trade, or contract through its agents consistently with its objects and purposes, without recourse to the seal.

All leases for a term of more than three years are required to be under seal; and so, generally speaking, are most documents purporting to actually transfer rights or property. Accordingly, the conveyance or mortgage of freehold property; the assignment of leasehold premises, a debt, or a policy of insurance; the transfer of shares in a company incorporated under the

Companies Acts; the sale or mortgage of a British ship or any share therein; or the sale of sculpture with copyright, are all instances of contracts requiring the formality of a deed.

A Contract of Record is one of a nature superior to any other form. It is so called because it is entered upon the rolls of a Court of Record, and it has really very little in common with a true contract. The most general form of this class of contract is found in a judgment. Amongst the advantages thereof is that the very fact of the judgment excludes all dispute as to its subject-matter, and that the judgment creditor may at once proceed to execute it by levy upon the debtor's goods, or otherwise. Other forms are: a *warrant of attorney*, by which a debtor gives his creditor authority to enter judgment against him for the agreed sum; a *cognovit actionem*, by which a party to a pending action acknowledges a right of the other party, and gives him an authority similar to that given in the case of a warrant of attorney; and a *recognisance*, or contract which is made with the Crown in its judicial capacity, such as a promise to keep the peace under penalty in case of breach.

Contracts required to be in writing.—All contracts, which are not specially contracts,—that is to say, contracts under seal or of record, are known as simple contracts, and these latter may be either in writing not under seal, or verbal. The necessity for writing exists, of course, in all those cases in which the contract is required to be under seal; but these having already been referred to, it remains only to refer to those cases in which merely writing and signature is required. It is by special statutes that this necessity has been created, and in particular by the STATUTE OF FRAUDS (*q.v.*) and the SALE OF GOODS (*q.v.*) Acts. As these two important Acts of Parliament are dealt with elsewhere more fully, it will be sufficient to here set out very briefly the classes of simple contracts which they require to be in writing.

By the Statute of Frauds, section 4, in order to constitute an agreement in respect of the following five matters, and upon which an action may be brought, it is necessary that some memorandum or note thereof should be in writing, and signed by the party to be charged therewith, or by some other person thereunto by him lawfully authorised. The five matters are:—(1) A special promise by an executor or administrator to answer damages out of his own estate; (2) Any promise to answer for the debt, default, or miscarriage of another person—a contract of guarantee or suretyship; (3) An agreement made in consideration of marriage;—not a promise to marry, but a promise made in consideration of, or conditional upon a marriage actually taking place; (4) An agreement or contract for, or an agreement or contract of, the sale of lands or hereditaments, or any interest in or concerning them; (5) An agreement not to be performed within the space of one year from the making thereof.

By the Sale of Goods Act, section 4, it is enacted:—

(1) A contract for the sale of any goods of the value of £10 or upwards shall not be enforceable by action unless the buyer shall accept part of the goods so sold, and actually receive the same, or give something in earnest to bind the contract, or in part payment, *or unless some note or memorandum in writing of the contract be made and signed by the party to be charged or his agent in his behalf.*

(2) The provisions of this section apply to every such contract, notwithstanding

that the goods may be intended to be delivered at some future time, or may not at the time of such contract be actually made, procured, or provided, or fit or ready for delivery, or some act may be requisite for the making or completing thereof, or rendering the same fit for delivery.

(3) There is an acceptance of goods within the meaning of this section when the buyer does any act in relation to the goods which recognises a pre-existing contract of sale, whether there be an acceptance in performance of the contract or not.

Consideration.—By the law of England, and herein it differs in a most important particular from the law of Scotland, there is no means afforded whereby performance may be enforced of a simple contract made without sufficient consideration. It is because this is so that a receipt given for a lesser sum in satisfaction of a greater, as mentioned above, does not prevent the giver of the receipt claiming and suing for the balance. The consideration required for a simple contract must be what is known in law as a valuable one; but, as will be seen presently, this only means that it should have some value, however inadequate it may in fact be. A valuable consideration may be defined as consisting either in some right, interest, profit, or benefit accruing to one party, or some forbearance, detriment, loss, or responsibility given, suffered, or undertaken by the other. Sir William Anson lays down four general rules as to consideration, and these we will now set out with illustrative cases.

1. *Consideration is necessary to the validity of every promise not under seal.*—To this rule there are the following exceptions:—(*a*) In dealings arising out of negotiable instruments, such as bills of exchange, promissory notes, or bonds, and other financial and mercantile instruments transferable by endorsement, and which are so recognised by the courts of law; (*b*) in respect to liabilities arising out of voluntary and gratuitous services, as in the case of a gratuitous bailment. But leaving these exceptions, we find the general rule rigidly insisted upon by the courts. For example, in an action against an administratrix who had promised to pay to the plaintiff, out of her own pocket, money due to him from the estate she was administering, it was held that she could not be compelled to fulfil her promise, there having been no consideration therefor. And this was so although her promise was in writing, in accordance with the requirements of the Statute of Frauds.

2. *It need not be adequate to the promise, but must be of some value in the eye of the law.*—The reason of this rule is that the courts leave the parties to a contract to decide for themselves whether or no the consideration therefor is adequate under the particular circumstances. Once the parties have settled upon some consideration of some value, the law is prepared to enforce the contract. And the law, as distinguished from equity, has always strictly acted in accordance with this rule. Equity, on the other hand, having been always accustomed to soften the severities of the law, has, when occasion has required, inquired into the adequacy or otherwise of the consideration for a contract, and given such relief from performance thereof, or otherwise, as the justice of a particular case may have demanded. This dealing by equity with the question of consideration is strikingly illustrated in cases relating to CATCHING BARGAINS, DECEIT, and FRAUD. Since the Judicature Act of 1873, law and equity have been administered in all the courts; but this fact has not in any way changed the law, nor made the legal doctrines

Photo: Mauil & Fox

SIR THOMAS DEWAR, born 1864, Managing Director John Dewar & Sons, Ltd., the well-known distillers. A Sheriff of London 1897–8. The author of "A Ramble Round the Globe," and a much-quoted authority on business subjects. He contributes an interesting article to the "Business Encyclopædia."

Photo: Adolphus Tear

H. F. Le BAS has made a remarkable place in the publishing world during the last few years. Is now Governing Director of the Caxton Publishing Co., Ltd., and Director of Geo. Newnes, Ltd. Mr. Le Bas contributes two articles to the "Business Encyclopædia" on the "Delegation of Authority" and "Punctuality."

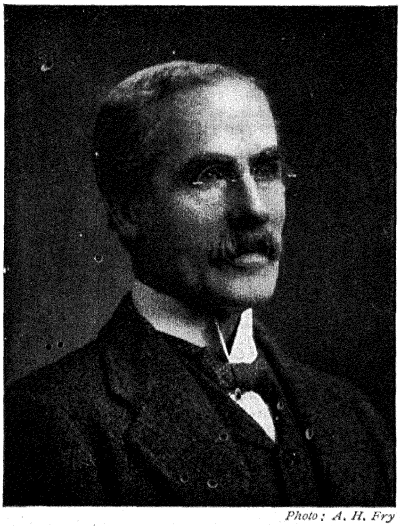

Photo: A. H. Fry

S. H. BENSON was originally in the Navy, turned his attention to advertising, and founded S. H. Benson, Ltd., the well-known firm of advertising agents. He writes with authority on all advertising subjects, and treats "Outdoor Publicity," only one of his many advertising interests, in the "Business Encyclopædia."

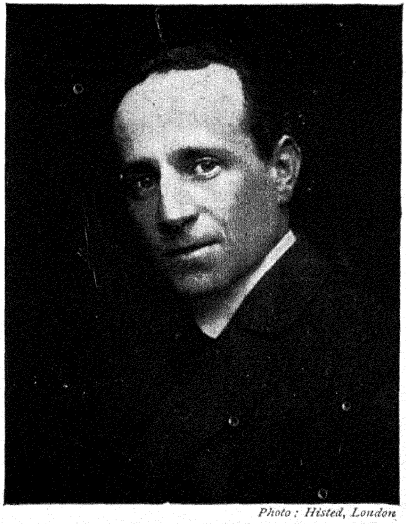

Photo: Histed, London

H. SIMONIS, originally intended for the Law, drifted into newspaper work. Joined *Morning Leader* and *Star* fourteen years ago, and is now Director of the *Daily News and Leader*. He writes largely on advertising subjects, and has introduced many new methods for advertising managers.

CONTRIBUTORS TO "BUSINESS ENCYCLOPÆDIA"

relating to contract, the subject of this article, any less comprehensively valid. Later on and elsewhere it will be seen that, notwithstanding an apparent opposition between the rules of law and equity, they are in fact co-operative. The apparent conflict arises from the different objects which law and equity had in view when stating their respective principles. The object of the law was to build up and maintain contracts, that of equity to relieve therefrom when necessary.

To focus, in as few words as possible, the meaning of the rule now under consideration, it may be stated that, though the consideration need not be adequate to the promise, it must (*a*) be in fact real, not merely illusory; (*b*) be of some ascertainable value, not merely an impossible and vague promise; (*c*) move from the promisee. Some illustrations from the Law Reports will probably make the above points clearer. (*a*) It does not matter how slight may be the benefit to the promisor or the detriment to the promisee (whichever the consideration may happen to be), that benefit or detriment will be sufficient to support the contract. In a well-known case one Bainbridge allowed his friend Firmstone to take some boilers and weigh them, Firmstone to return them in as good condition as when lent. But Firmstone returned them in the pieces into which they had been divided for the purpose of weighing, but otherwise in good condition Bainbridge brought an action for damages, and succeeded, it being held that the mere allowing to weigh was a sufficiently real consideration. The judge who tried the case said: "The consideration is that the plaintiff, at the defendant's request, had consented to allow the defendant to weigh the boilers. I suppose the defendant thought he had some benefit; at any rate there is a detriment to the plaintiff from his parting with the possession for ever so short a time." (*b*) The consideration must be of some ascertainable value—not an impossible, vague, or illegal promise, or one based upon some merely moral motive. Thus a merely moral obligation is not sufficient to support a promise. A kindly-disposed man sees a boy in the street in a starving condition and gives him food to eat. The father of the boy, afterwards hearing of the man's generosity, promises to pay him the value of the food but does not fulfil his promise. The kindly-disposed one has no remedy and is unable to recover the price of the food, because the father's promise was based at the most upon a sense of merely moral obligation. Again, a tailor, without an order from a boy's guardian, supplies clothes to the boy, who is otherwise absolutely without the necessaries of clothing; that tailor cannot recover the price thereof from the boy's father. The fact of goods thus supplied to a child being necessaries is of no importance in a question as to the liability of the parent. People are apt to imagine that a child stands in respect to necessaries upon the same footing as a wife. But this is not so. If it be asked, "Is, then, the child to be left to starve?" the answer is, he must apply to the parish, and they will compel the father, if of ability, to pay for his son's support. If, however, the moral obligation had once been a legal one, as in the case of a statute-barred debt, a promise to pay it would be considered to be grounded upon a sufficient consideration and would be enforced by the law. To this latter rule there is an exception in the case of legal obligations which have been discharged by the operation of the Bankruptcy Acts; for in such a case a promise in respect thereof, made after discharge by bankruptcy, in order to be binding would have to be grounded upon a new consideration.

(*c*) *The consideration must move from the promisee.*—The law is now firmly established that no "stranger to the consideration" can take advantage of a contract; not even if the contract has been entered into expressly for his benefit, or if he is a near relative of the person from whom the consideration moved. Such a "stranger" cannot, therefore, sue in respect of the contract. Accordingly, if A. enters into a binding contract with B. to do something for the benefit of C., the latter cannot sue A. in case of a breach by him of his contract; nor if C. were the son or daughter of B. would his position be any the more advantageous.

The other two rules are:—3. *It must be legal*, the law in respect to which is generally the same as that in respect to legality of object, as on page 15; and 4. *It must not be a past consideration*, such as one prompted by mere feeling of gratitude for some past act.

Capacity of Parties.—In considering the subject of contracts, it is most important to discover what persons are entitled to enter into contracts and who are incapacitated, either wholly or in part, from doing so. We have already seen that an essential element of a contract is that its performance may be enforced by the law; if, therefore, any person is in such a position that the law will not force him to fulfil his obligations, it is clear that such a person is so far incapacitated from being a party to a contract. The courts will not entertain an action against a sovereign prince, unless he is willing to, and does in fact submit himself to their jurisdiction. For that reason alone a sovereign is incapacitated from becoming a party to a contract. If a merchant enters into a contract of sale with a sovereign, and the latter breaks it in some respect, he cannot be sued therefor against his will. Nor if any one lent a five-pound note to, say, the Emperor of China, upon a promissory note, could his Majesty be sued thereon against his will, if—a very unlikely event—the note were dishonoured. Neither the aforesaid contract of sale or the promissory note could under the circumstances be properly designated as contracts. A few years since the Sultan of Johore, whilst residing in this country as a private person, made a promise of marriage under an assumed name. He failed to keep his promise and the lady sued him, but the Court refused to entertain the action. Ambassadors and the members of their households have a like privilege.

Leaving these great personages, we will turn to such ordinary people as felons, barristers, and physicians. The first-named cannot enter into a valid contract during the period of his conviction; and for the purpose of enforcing contracts he may have entered into before conviction the Crown will appoint an administrator. A barrister cannot, under any form of action, sue for his professional fees; nor can a physician if he is forbidden by the bye-laws of the College of Physicians. Beyond merely stating that an infant may enter into binding contracts for necessaries, we will leave a more detailed discussion of his capacity to contract, and of his liabilities under contract, to the article under the heading of INFANTS; and in like manner a consideration of the contractual position of married women and lunatics will be found under the headings of HUSBAND AND WIFE and LUNACY respectively.

Reality of Consent.—Contract being based upon "agreement," it follows that it is equally grounded upon a real mutuality of intention in the minds of the parties to a contract. If one party means one thing, and the other party something else, it is obvious that there is no real agreement between

the parties. The absence of such a real agreement may be said to result from five different leading clauses, *e.g.*, from mistake, misrepresentation, fraud, duress, or undue influence, and the question arises, what are the legal consequences thereof upon the contract?

Mistake.—To have any legal consequences, mistake must be in respect of the contract itself, not in respect of the performance of it; as where one party mistakenly believes in the particular capability of the other party to perform its terms. An error of judgment, uninfluenced by fraud or misrepresentation of the other party to the contract, is not mistake against which the law will relieve the prejudiced party. If a party to a contract is induced to enter into it by the fraudulent misrepresentation of a third party as to the nature or the existence of the contract, he will be relieved from performance thereof even if the other party to the contract is innocent in the matter. But the case must be a very strong one. Take that of a blind man, or a man who cannot read, or who for some reason—but not through negligence—forbears to read, who has a written contract falsely read over to him, the reader misreading to such a degree that the written contract is of a nature altogether different from the contract pretended to be read from the paper, which the blind or illiterate man afterwards signs. Here it may be taken as positive that, if there has been no negligence on his part, that man's signature so obtained will be of no force. It is invalid, not merely on the ground of fraud, but on the ground that the mind of the signer did not accompany the signature; in other words, that he never intended to sign, and therefore in contemplation of law never did sign, the actual contract to which his name was appended. On these principles a very old man, named Mackinnon, who was induced to endorse a bill of exchange by being told that it was merely a guarantee, was held not to be liable thereunder even as against a holder of the bill for value who was innocent of the fraud.

Where there has been a mistake as to the identity of the person with whom the contract is made, the party prejudiced may sometimes be entitled to relief. Thus, in one case, Jones, who had been in the habit of dealing with a manufacturer named Brocklehurst, sent him one day an order for some goods, but on that very day Brocklehurst's business had been taken over by his foreman, who executed the order, and forwarded the goods to Jones without giving him notice that the goods were not supplied by Brocklehurst, but by himself. It happened that Jones had a set-off against Brocklehurst, and was consequently rather disagreeably surprised when he subsequently discovered that Brocklehurst was not his creditor in respect of the order, but a third party who claimed payment without regard to the set-off. Jones, however, resisted payment, and the Court refused to make him pay for the goods, on the ground that it lay upon Brocklehurst's late foreman to first of all prove a contract between himself personally and Jones. Of the foreman Jones knew nothing, never thought of him, and never even intended to deal with him; as between those two there was no consensus of mind which could lead to any agreement or contract whatever; there was merely the one side to a contract, where in order to produce a contract, two sides would be required. The position under this class of mistake is summed up by Sir W. Anson as follows—and as no more: "If a man accepts an offer which is plainly meant for another,

or if he becomes party to a contract by falsely representing himself to be another, the contract in either case is void. In the first case the party takes advantage of the mistake, in the other he creates." The doctrine of mistake will not therefore go so far as to include the case of a man who goes into the shop of a tradesman of an ordinary character, which he has always believed to be carried on by a person named Brown, and whose name is at the time appearing as the owner of the business, has work done for him there, and subsequently discovers that the work was done by a Mr. Smith, who had bought Brown's business. Here the identity of the particular tradesman was a matter of—at most—secondary importance, and so long as the work is done in accordance with the order given, it must be duly paid for.

If there are two things having the same name, and one person makes an offer to another, specifying the name of the article, and having in his mind a certain one, should the person to whom the offer is made, in accepting it, be under the impression that the offer is made in respect of the other one of the two things, that offer and acceptance will not result in a contract. The reason for this is the mistake therein as to the identity of the subject-matter of the contract. In this instance the mistake may only exist in the mind of one of the parties—the one accepting the offer, for instance; but further than this, it may be taken as a general rule that when a contract is based upon a misapprehension of the facts by both parties it will be void.

Mistake may also be relieved against where it exists mutually between all the parties to the contract, in respect of the existence of the thing contracted for, or by the existence of a right. More important, however, is mistake by one party as to the intention of the other—that mistake being known to the other. It will be noticed that this class of mistake excludes those arising out of mere error of judgment in respect to which each of the parties has an equal opportunity to arrive at a correct decision. The essence of this class of mistake is the "underhand" or concealed knowledge of one of the parties. In connection with this part of our subject, special reference should be made, however, to the articles on WARRANTIES and CONDITIONS, and on UBERRIMA FIDES. In the form of a general rule, a mistake of this description, which will be relieved against, may be stated as existing when "one man knows that another understands his promise in a different sense from that in which he makes it."

The subject of MISTAKE is dealt with more generally under that title, from the point of view of the party who, having entered into a contract by "mistake," wishes to know, and to pursue, his remedy. Here it will be sufficient to say that if the contract is "executory," he should repudiate it and defend any action which may be brought against him in respect thereof. If, however, it is executed by his having paid money, he should sue for its return.

Misrepresentation and fraud.—Misrepresentation may, under certain circumstances, avoid a contract, and give reason to a party thereto to repudiate it. The misrepresentation to which allusion is now made must be distinguished from such a misrepresentation as would amount to fraud, for the latter would always be a ground for avoidance of a contract in favour of a party thereto who has been prejudiced by the fraud. Misrepresentation, as such, must be innocent; when coupled with design, recklessness, or culpable negligence, it becomes a fraud. Misrepresentation gives a right to repudiate

a contract, or to have it rescinded; fraud also gives this right, but there is added to it a right to sue the party guilty of the fraud for damages in an action for deceit. In considering whether a contract has been induced by misrepresentation, it is first of all necessary to decide whether the particular facts relied upon as a misrepresentation really constitute a misrepresentation, or whether they are not rather a statement of the terms or conditions of the contract.

Properly speaking, a misrepresentation is a statement or assertion made by one party to the other, before or at the time of the contract, of some matter or circumstance relating to it. Though it is sometimes contained in the written instrument, it is not an integral part of the contract; and consequently the contract is not broken though the misrepresentation proves to be untrue. With the exception of the case of policies of insurance—certainly of marine policies—such an untruth is not a cause of action, nor has it any efficacy whatever unless the representation was made fraudulently, either by reason of its being made with a knowledge of its untruth, or by reason of its being made dishonestly, with a reckless ignorance whether it was true or untrue. Though representations are not usually contained in the written instrument of contract, yet they sometimes are. But their insertion therein does not alter their nature. A question however may arise whether a descriptive statement in the written instrument is a substantive part of the contract. This question is one which a judge and not a jury should determine. If the judge should come to the conclusion that such a statement by one party was intended to be a substantive part of his contract, and not a mere representation, the often discussed question may be raised whether this part of the contract is a condition precedent, or only *an independent agreement, a breach of which will not justify a repudiation of the contract*, but will only be a cause of action for compensation in damages.

In the construction of charter-parties, this question has often been raised with reference to stipulations that some future thing shall be done or shall happen, and has given rise to many nice distinctions. Thus a statement that a vessel is to sail, or be ready to receive a cargo, on or before a given day, has been held to be a condition, while a stipulation that she shall sail with all convenient speed, or within a reasonable time, has been held to be only an agreement.

But with respect to statements in a contract descriptive of the subject-matter of it, or some material incident thereof, the true doctrine appears to be, generally speaking, that if such descriptive statement was to be regarded as a warranty, that is to say, a condition on the failure or non-performance of which the other party may, if he is so minded, repudiate the contract altogether, and so be relieved from performing his part of it, provided it has not been partially executed in his favour. If, indeed, he has received the whole or any substantial part of the consideration for the promise on his part, the warranty loses the character of a condition, or, to speak perhaps more properly, ceases to be available as a condition, and becomes a warranty in the narrower sense of the word, viz. a stipulation by way of agreement, for the breach of which a compensation must be sought in damages.

Upon one Bannerman offering hops for sale to a Mr. White, the latter asked if any sulphur had been used in the treatment of that year's growth. Bannerman having replied in the negative, and White having remarked that he would not even ask the price if any sulphur had been used, White ulti-

mately purchased by sample the growth of that year. Afterwards, White repudiated the contract, and refused to take delivery of the hops, on the ground that sulphur had been used in their treatment. Bannerman sued for their price, and the jury found that though sulphur had been used the representation of Bannerman negativing that fact was not wilfully false. Though the representation had been made before the commencement of the bargaining which was concluded after inspection of a sample, it was found to have been intended by the parties to be part of the contract of sale and a warranty by Bannerman. The judge held that White had required, and Bannerman had given his *undertaking* that no sulphur had been used. This undertaking was a preliminary stipulation; and if it had not been given White would not have gone on with the bargain which resulted in the sale. In this sense it was the condition upon which White had contracted; and it would be contrary to the intention expressed by this stipulation that the contract should remain valid if sulphur had been used. On this ground of the breach of a preliminary condition, White was discharged from taking the hops. The intention of the parties governs in the making and in the construction of all contracts. If the parties so intend, the sale may be absolute, with a warranty superadded; or the sale may be conditional, to be null if the warranty is broken.

The misrepresentation which leads to fraud must be one of fact, not one of opinion. It need not be made to the injured party; but it must be made with the intention that it should be acted upon, and it must in fact actually deceive. Mr. Langridge, senior, entered the shop of a Bristol gunsmith, and offered to purchase a gun for the use of himself and his sons. The gunsmith thereupon showed him a gun which he represented—falsely as it turned out—to have been made by one Roch and to be a good, safe, and secure gun, whereupon a sale was effected. Shortly afterwards the gun, whilst being used by one of the young Langridges in a perfectly fair and sportsmanlike manner, burst and blew off his left hand. It was this Langridge the younger who brought an action against the gunsmith for false representation, and, notwithstanding much forensic opposition, he was successful on the ground that there was fraud, and damage the result of that fraud, not from an act remote and consequential, but from one contemplated by the gunsmith at the time of the sale as one of its results. The party guilty of the fraud was therefore responsible to the party injured.

Duress and undue influence.—A contract obtained by duress may be repudiated by the party prejudiced by the duress, and any money paid thereunder may be recovered. He may, however, at his option, enforce the contract. Persons who are *drunk* at the time of contracting are regarded in the same light as LUNACY; but a party to a contract who is at the time under *delusions* as to its subject-matter cannot, on that account only, repudiate it. In a case where a party was under a delusion that a farm was impregnated with sulphur, the Master of the Rolls (Sir G. Jessel) said that "although a man may believe a farm to be impregnated with sulphur, and not fit for himself to live in, he may still be a shrewd man of business, and may even believe that the other side may not know of the impregnation of the farm with the sulphur, and that in consequence he may get a higher price for it than if it was known that it was so impregnated. He may have

been perfectly right in his conclusion upon that subject." A person who has been induced to enter into a contract by undue influence has the right to rescind it in the same manner as if it had been induced by fraud. It is in fact a form of imposition. Fraud or imposition cannot be condoned; the right to property acquired by such means cannot be confirmed by the Court unless the party said to be unduly influenced has at the time of desired confirmation a full knowledge of all the facts, full knowledge of the equitable rights arising out of those facts, and an absolute freedom from the undue influence by means of which the frauds were practised. Where a lady allowed five years to elapse from the time she retired from a sisterhood to the time she attempted to reclaim gifts she had made to it before her retirement, and during the whole of which five years she knew her rights and how to exercise them, and was in communication with her solicitor, the Court refused to recall the gifts, on the ground that her action during those five years was in effect a confirmation.

Legality of object.—Of essential importance in the consideration of our subject is that some attention should be paid to the object itself of a contract. There may be a perfect agreement between the parties thereto, the parties themselves may have full capacity to contract, the consideration may be sufficient, and all the legal requirements as to form may be complied with. But even then no valid contract may have been created. The agreement may have been in respect of some illegal object—one to which the law will not assist the parties to attain. There will therefore be no valid contract created, for the agreement between the parties will be one which the courts will refuse to enforce; or to state the same thing in another way, a contract, the object of which is illegal, is altogether void. If the contract consists of more than one object, then if the illegal part cannot be severed from the legal part, the contract is altogether void; but if the parts can be severed, the bad part may be rejected and the good retained, the contract being valid so far as regards the good part.

There are two great classes of illegality: the illegality which arises from special statutory enactment, and that which exists apart from statute at common law. Illegality by statute is created in many cases—the revenue laws for example may prohibit certain transactions, or, except with certain classes of persons, trading may be prevented. But it is upon the subject of wagering that most of the attention created by prohibitive legislation in respect of illegality is centred. The good, bad, and indifferent of the community, the rich and the poor, the young and the old, are all more or less concerned with the question of gambling, wagering, or betting. Each of these three last terms means practically the same as the others. Whether the transaction is that of a marine or other insurance, or whether it be an ordinary bet on a horse, it is a gamble. But so long as the assured has an insurable interest in the subject of an insurance, he may lawfully effect a contract of insurance, though in doing so he is as surely betting against the safety of his own ship, or the duration of his own life, as is the owner of a horse betting when he gives or takes odds against it winning the Oaks. Leaving aside cases of insurance, it may be stated shortly that all contracts or agreements, whether verbal or in writing, by way of gaming or wagering are null and void, and no action can be brought in respect thereof. And

not only these original contracts or agreements themselves are null and void, but so also is any agreement whatsoever which arises out of a wager or is made in contemplation of one. Any promise, express or implied, to pay any person any sum of money paid by him under or in respect of any contract or agreement which is null and void on account of its being a waging contract or agreement, is itself null and void. And so is any contract or agreement to pay any sum of money by way of commission, fee, reward, or otherwise in respect of any such waging contract, or of any services in relation thereto or in connection therewith. The law generally on this topic will be found in the articles on BETTING, and GAMING.

At common law, amongst illegal agreements are those the objects of which are—(*a*) to commit an indictable offence or civil wrong; (*b*) against the policy of the law; (*c*) to pervert the course of justice; (*d*) in abuse of legal process; (*e*) contrary to good morals; (*f*) in respect of marriage; (*g*) in restraint of trade. (*a*) If parties agree together to commit a crime, the agreement is illegal, and cannot be enforced. Many years ago, a somewhat bold individual presented a petition to the Court, alleging that he had been a partner with another in the profession or calling of highwaymen, that he was unable to obtain his share of the profits from his partner, and praying the aid of the Court in the matter. But the Court does not seem to have granted the prayer; on the contrary, the petitioner's attorney and counsel appear to have been respectively struck off the rolls and debarred, for their effrontery in assisting such a litigant. If one person agrees with another to commit an assault, or to defraud, or to libel another, the agreement cannot be maintained, for in either of such, or in like cases, the objects would be to commit a crime or civil wrong.

(*b*) If there had been any agreement in respect of the Jameson Raid, having that enterprise as its object, none of the parties to it could have maintained an action in respect thereof. Nor can there be a valid contract in the case of any agreement tending to upset public peace. Should any one set about to obtain loans for the subjects of a friendly state, in order that they might prosecute a war against their sovereign, our courts would afford him no assistance. And in a recent case an agreement to advertise a theatre by means of fictitious legal proceedings was held to be void (*Dann* v. *Curzon*). (*c*) It is an illegal agreement which has for its object the stifling of criminal prosecutions, where, for example, a prosecutor agrees not to pursue a prosecution, but to refrain therefrom, and not give evidence. Though this is the general rule, it may be safely laid down that the law will permit a compromise of any offence which is made the subject of a criminal prosecution, if the party injured has an equal right to sue and recover damages in respect of the offence. It is often the only manner in which he can obtain redress. But if the offence is of a public nature, no agreement can be valid that is founded on the consideration of stifling a prosecution for it. A prosecutor may accordingly "stifle" a prosecution for an assault, but he may not do so where the charge is one of theft. He must first ask himself the question: "If I do not prosecute, can I sue the offender for damages?" Should the answer be in the affirmative, he may withdraw from the prosecution upon the best terms he can obtain from the defendent; but should the answer be in the negative, he must proceed with the prosecution. Classes (*d*) and (*g*) of illegal agreements are dealt with in the articles on BARRATRY and RESTRAINT OF TRADE respectively.

This Indenture made the fourteenth day of February One thousand nine hundred and ten **Between** Arthur Taylor of 4 George Street Torquay in the County of Devon Draper (hereinafter called "the Vendor") of the one part and George Alfred Barham of 93 Trouville Road Stoke Newington in the County of London Draper (hereinafter called "the Purchaser") of the other part **Witnesseth** that in consideration of the sum of Five hundred pounds now paid to the Vendor by the purchaser as to Three hundred pounds thereof in cash and as to the balance thereof in two bills of exchange for one hundred pounds each bearing even date herewith and drawn by the vendor upon the purchaser payable one month and two months after date respectively (the receipt of which cash and bills so hereby acknowledged) the Vendor as beneficial owner hereby assigns unto the purchaser **All** the beneficial interest and goodwill of the vendor in the trade or business of a linen and woollen draper hosier haberdasher and outfitter now and for some years past carried on by him at 4 George Street Torquay aforesaid **and also** all the book and other debts now due and owing to him on account of the said trade or business and all securities for the same particulars of which debts are contained in the books of account hereinafter mentioned **and also** all contracts and engagements benefits and advantages which have been entered into with the Vendor or to which he is or can be entitled on account or in respect of the said trade or business **and also** all the stock in trade of linen and woollen drapery hosiery haberdashery and outfitting goods articles and things and books of account which at the date hereof belong to the vendor on account of the said trade or business or are in anywise used in the same and are in the shop warehouse and premises aforesaid **and also** the fixtures and fittings now in the said shop warehouse and premises **To hold** the same unto the purchaser absolutely **And** the Vendor hereby irrevocably appoints the purchaser his attorney for him and in his name or otherwise to sue for recover and receive and give effectual discharges for the debts hereby assigned **And** in addition to the covenants for

title implied by law the Vendor hereby covenants with the purchaser as follows namely **That** the Vendor will not at any time hereafter either by himself or in connection with any other person or persons either directly or indirectly in any manner howsoever carry on manage conduct or assist either as proprietor partner or employee or otherwise in the said trade or business of a draper within ten miles of Torquay during the term of Ten years next ensuing and that the amount and particulars of the book debts due to the vendor as aforesaid are correctly stated and set forth in the books of account and other books delivered by the vendor to the purchaser

In witness whereof the said parties to these presents have hereunto set their hands and seals the day and year first before written.

Signed sealed and delivered by the said Arthur Taylor and George Alfred Barham in the presence of

A. Taylor (L.S.)

Geo. Alf. Barham (L.S.)

Arthur H Graham.
Solicitor
Grays Inn Square
W.C.

In (*e*) there is an important class of illegality—that of immorality. A print-seller in Piccadilly was ordered by a customer to send to him all the caricature prints that had ever been published. On delivery the customer refused to take those which consisted of obscene and immoral subjects, and in this refusal he was upheld by the judge who tried the case, and who said that he could not permit the print-seller to recover the price of those prints whose tendency was immoral or obscene, nor for such as were libels on individuals, and for which a purchaser might have been held criminally answerable for a libel. This judgment also incidentally suggests support to the rule that an agreement the object of which is to commit a crime will not be enforced. If a printer prints an immoral work he cannot sue for the price of the job. This is consistent with the judgment in the action concerning the price of printing the *Memoirs of Harriet Wilson*—an immoral and libellous book. The judge then said, "Every one who gives his aid to such a work, though as a servant, is responsible for the mischief of it." A contract will be absolutely void if made for a consideration of future illicit cohabitation; but if in consideration of a past illicit cohabitation, it will be valid if made under seal. A contract to further an immoral purpose, as by selling a brougham to a prostitute on credit, knowing it will be put to the immoral purpose, will be illegal. If, however, the articles supplied are necessaries, an action may be maintained for their price. But a landlord who knowingly lets his house to a kept mistress cannot recover rent from her (*Upfill* v. *Wright*). (*f*) The contracts in respect of marriage which are illegal may be agreements to pay a commission for services rendered in the negotiation of a marriage, an agreement not to marry any one but a certain person, there being no actual promise to marry that person; or agreements providing for a possible future separation of husband and wife. The latter class of agreements must be distinguished from the agreement for immediate separation, which is valid.

Where a contract is to do a thing which cannot be performed without violation of the law, it is void whether the parties knew the law or not; but if the thing can be legally performed, and the agreement is that it should be done in an unlawful manner, it must be shown that there was a wicked intention to break the law in order to get the Court to avoid the contract. When a contract is discovered to be illegal, it may happen that a party to it has paid money in respect of it and is anxious to recover it. He can do this only when he is not in equal fault with, or when he is more excusable than the other party to the contract, and where public policy is considered as advanced by allowing him to sue for relief against the transaction. A party would not be held to be in equal fault with another party to a contract if he was in the power of the latter, and had no alternative but to submit to his dictation and to enter into the contract. If money is paid or goods delivered for an illegal purpose, the person who had so paid the money or delivered the goods may recover them back before the illegal purpose is carried out; but if he waits till the illegal purpose is carried out, or if he seeks to enforce the illegal transaction, in neither case can he maintain an action.

Assignment.—An obligation or liability under a contract cannot be assigned by his own act by the party upon whom the obligation or liability is imposed; it may however be assigned by operation of law. Of course if the other party—the one to whom the obligation or liability is due—consents, an assignment by act of the party is possible. That part of a contract

which is really capable of assignment is the benefit of the contract. The practical method of assignment is that of transfer, together with notice thereof to the parties liable under the assigned contract. Such an assignment is discussed more fully in the articles BOOK-DEBTS; CHOSE IN ACTION. Contracts of a particular nature, such for example as policies of insurance, charter-parties, bills of lading, bills of exchange, foreign and colonial bonds, and debentures, have their own special modes of assignment, derived either from the custom of merchants or from statute, or both. Obligations or liabilities may be transferred by operation of law in the case of (*a*) Marriage, when the husband becomes liable for the antenuptial debts of his wife to the extent of all the property he may have acquired by his marriage; (*b*) Death, when the executors and administrators of a deceased become liable, so far as the estate permits, for his liabilities—though this liability would not include anything in respect of contracts for the personal services of the deceased, and which remain unperformed; (*c*) by Bankruptcy, when the trustee fills the place of the debtor; but the liability thus transferred may under certain circumstances be modified or renounced by and at the option of the trustee.

Construction of a contract.—How are the terms of a contract to be understood? The answer is simple: By the precise wording thereof, subject to the light thrown thereon by the whole tenor of the document. If any words are capable of receiving two meanings, that one will be adopted which tends to make the document valid; plain mistakes in grammar and spelling will be corrected. But in any case, since every one is responsible for his own words, words will be given a meaning most strongly against the interest of him who uses them. Any provisions as to time will be considered liberally, and unless they are expressed to be of the essence of the contract they will be taken as merely indicative of the time proximately intended. But this rule does not apply to mercantile contracts, in which time is always taken to be of the essence of the contract. If a penalty is fixed in case of breach of a condition, the Court will not regard its amount, but only give the actual damages. If, however, the penal sum is expressly stated to be in the nature of liquidated damages, the sum will be adopted by the Court, unless on the face of it it appears to have been evidently intended as a penalty only, and not as actual damages.

Discharge.—Having now considered the subject of contract from its inception in offer and acceptance through the stages of its development to its completion, it remains but to discuss the mode of its discharge. There are various ways in which a contract may be discharged, and of these the following may be specified: By agreement, performance, breach, impossibility, or by the operation of law. And first as to discharge by agreement. In the case of an executory contract it is competent for both parties by mutual agreement, without any satisfaction, to discharge the obligation of that contract; writing or a deed is not necessary—a verbal waiver of the contract will be sufficient. But if the contract is an executed one, that is to say one in which a party has performed all that he is obliged to, it cannot be discharged except by release under seal or by performance of the obligation, as by payment where the obligation is to be performed by payment. In the case of a bill of exchange it is sufficient if the holder

waives his rights in writing, or gives the bill back to the acceptor. A substituted agreement, a substantial alteration of the terms of the contract, or the introduction into the contract of new parties, are each circumstances sufficient to discharge a contract. The principle of the operation of the first two of these cases is easily understood. But the third one calls for some illustration, as *e.g.* where a partner retires from a firm and a new one comes in. There, if the two original parties—the creditors and the old firm, and the new firm as constituted by the incoming partner—all consent, the debts of the old firm may be transferred to the new firm, and the original contract between the creditors and the old firm be thereby discharged. Again, the contract may be discharged by compliance with some condition reserved in the contract with that object. A party thereto may, for example, have the right to exercise an option to discharge himself therefrom.

Payment is a form of discharge by performance, and is considered in the article on ACCORD and SATISFACTION, but together with this form may be mentioned TENDER (*q.v.*), which operates in law as a payment. *Discharge by breach* is a topic of a rather technical nature. A breach of contract by one of the parties always gives a right of action for damages to the other, but it does not always discharge that other from himself performing his part of the contract. When it does discharge the other party it depends mainly upon the facts of the particular case, and it is difficult to lay down any definite legal principle on the point. The legislature seems to have appreciated this position when consolidating the law with regard to the Sale of Goods. In the Act with that title it is provided that where there is a contract for the sale of goods to be delivered by stated instalments, which are to be separately paid for, and the seller makes defective deliveries in respect of one or more instalments, or the buyer neglects or refuses to take delivery of or pay for one or more instalments, *it is a question in each case*, depending on the terms of the contract and the circumstances of the case, whether the breach of contract is a repudiation of the whole contract, or whether it is a severable breach giving rise to a claim for compensation, but not to a right to treat the whole contract as repudiated. If the contract is an executory one, a party to it may be said to be discharged therefrom by breach, when the other party either (*a*) puts it out of his power to perform it, or (*b*) expressly renounces the contract. The renunciation must, however, be express and precise. If the conduct of the defaulting party amounts to an intimation of intention to abandon and altogether refuse performance of his part of the contract, the other party is relieved from performance on his part. And he is relieved from the moment of the breach, and if it is a case for damages he may sue therefor without waiting for the passing of the day upon which performance should be completed.

On the 12th April Mr. Delatour engaged Hochster as a courier to accompany him upon a foreign tour he was then meditating, the service to commence as from the subsequent 1st June. Mr. Delatour having written to Hochster on the 11th May informing him that he should not require his services, the courier at once brought an action without waiting for the time for performance to arrive. This the Court held he was entitled to do, and consequently Mr. Hochster succeeded. A few years ago a fireman was engaged to serve on a Japanese warship. He entered upon

his duties, and war breaking out between Japan and China he was unable to continue in the service in consequence of the provisions of the Foreign Enlistment Act. The act of Japan in declaring war with China was held to render his performance of the contract legally impossible, and he was accordingly permitted to recover the whole of his wages as agreed upon. For a ship not to arrive at the agreed time for a contemplated voyage, *but at such a time as would frustrate it*, would be a breach of contract on the part of the shipowner, and the charterer would be discharged; his contemplated voyage would be thus rendered impossible.

A party to a contract who has been discharged therefrom by the breach of the other party has three courses open to him. (1) He may, if occasion requires, claim to be relieved from further performance of his part of the contract. (2) If he has done anything on account of his own performance he may sue for and recover the worth thereof. (3) He may also sue for damages in respect of the breach.

A contract is also discharged when its performance becomes legally impossible, as through the change of the law, or because its subject-matter is destroyed without fault by either of the parties. It is also discharged by operation of law in such a case as the bankruptcy of a party. *See* CONTRACT OF SALE; CONTRACTOR.

CONTRACT OF SALE.—*Of Goods.*—Upon reference to page 7, the reader will find, set out in full, section 4 of the Sale of Goods Act, 1883. This Act is a general consolidation of the law relating to the sale of goods, and section 4 thereof has particular regard to the formation of the contract of sale. By that section all contracts for the sale of goods, the value whereof is £10 or upwards, are required to be in writing in order to be enforceable by the law. The section also sets forth certain circumstances under which writing may be dispensed with; but these being in the nature of part performance of an existing contract, have no concern with the present article, which is confined to the consideration of the formation of a contract. In the first place it should be noticed that contracts or agreements relating to the sale of goods, wares, or merchandise are exempt from stamp duty. In the next place it is necessary to point out that the £10 limit has regard to the *value* of the goods sold, not to the price at which the bargain is made. And it is the value of the whole sale that must be considered. It is no excuse for the absence of writing that the whole transaction is made up of separate and independent items, none of which has so high a value as £10.

Who may sell.—There is no practical need to inquire into the right of anybody to be a purchaser; for, provided the vendor is satisfied, any one, generally speaking, may buy. But in many cases a person who wishes to sell some particular goods feels bound to ask himself or his lawyer the question: Have I such a title to the goods as to be within my rights in selling them? The answer is best arrived at from the purchaser's point of view. If the vendor's title to the goods is merely voidable—that is to say, not void at the time of the sale, but which may become void at a later date, or on the happening of some subsequent event—he is in a position to sell to a *bonâ fide* purchaser who knows nothing of the defect in the title. And to such a purchaser a valid and effectual sale may be made in "market overt," even though the vendor has no lawful title at all. There would be a sale in

market overt in the case of a sale between sunrise and sunset on a week day, of goods exposed in a shop in the city of London, and which goods were of the class of the vendor's usual stock and were sold in the ordinary course of his business. The sale of HORSES in market overt is a subject to be treated separately. An innkeeper may sell goods of his guest in accordance with the provisions of the Innkeepers Act; a pledgee in the event of a pledge having become lawfully forfeited to him; and a sheriff or bailiff when the goods have been taken in execution or distress and all requirements of the law have been observed. So may an agent sell when such an act is within the scope of his agency, and if he has the goods or the documents of their title in his possession, his authority to sell may, in cases connected with his ordinary business, be taken as sufficiently proved. Should he be a mercantile agent within the meaning of the FACTORS Act, there would, under the latter circumstances, be no doubt about a *bonâ fide* purchaser acquiring a good title to goods sold.

Contract of Sale—its meaning.—Where under a contract of sale the property in the goods is transferred from the seller to the buyer, the contract is called a sale. But where the transfer of the property in the goods is to take place at some future time, or subject to some condition to be thereafter fulfilled, the contract is called "an agreement for sale." From this it appears that a contract of sale may be either an actual sale or merely an agreement for sale. A loan, pledge, or deposit will not be a sale, nor will an agreement for either be an agreement for a sale. Nor will an exchange, or an agreement for an exchange, be a contract of sale. There is often a difficulty in deciding whether a particular contract is one of sale or one of work and labour done. It has been decided that a contract with a printer to print a book, he having the materials supplied to him, is a contract for work and labour, not a contract of sale. So probably would be the case in a contract with a tailor to make a suit of clothes, he also having the materials supplied to him. But if the tailor supplied the materials as well as the labour the contract would be one of sale, and even if he did not supply the materials the contract would be one of sale after the clothes had actually been delivered to the customer. A dentist would be said to "sell" any artificial teeth he might supply to a patient. As a general rule it may be laid down that if the work and labour is bestowed in such a manner as to result in nothing that could be properly said to be the subject of sale, the contract would be one of work and labour, not of sale.

Its form.—There is no special form required by statute, the only requirement is that the contract should be in writing and signed by the party to be charged or his agent. Again, it should be noticed that a contract of sale is not in itself bad and invalid because it is not in writing; the statute only says that it shall not be enforceable by action unless such is the case. It results therefore from this that the contract may be put into writing at any time after it has been made, provided of course that this is done before an action upon the contract has been commenced. No special form being required, the contract may be contained in any class of document, provided it is duly signed and the terms are set out with sufficient clearness. Nor even need it be contained in one document; two, or a series or collection of documents may together constitute the contract. But in either of such latter cases the various documents must, on their face, show a connection one with another, either by reference to each other or by mutual references

to a circumstance, such as a verbal agreement or arrangement, which is common to them all. Thus a letter which contained a reference to "our arrangement," which arrangement was set out in another letter, was held to thereby refer to and be connected with the letter containing the arrangement.

The whole of the terms of the contract must be set out in the document with sufficient clearness to enable them to be completely gathered from the document itself, without reference to any other documents or any verbal evidence. But of course the contract may specifically refer to another document as containing terms or conditions intended to be adopted by the parties to the contract. In particular, the law requires the price payable in respect of the sale, or in other words the consideration for the contract, to be included in the writing. And in this insistence upon precision and particularity the law is only consistent with regular business methods. Apart from (*a*) the price and the terms generally, the contract should contain, if only as a business precaution, (*b*) correct specification of the quality and description of the goods; (*c*) correct particulars of the quantity; (*d*) a precise mention of the time of delivery.

The signature of the party to be charged in respect of the contract, or of his agent, must also appear in the contract; and the parties to the contract must be sufficiently described therein to make their certain identification possible from the contract itself. If the contract is contained in a letter, the name of the person to whom it is written may be supplied from the address of the envelope in which it was sent. Or the words "proprietor," "vendor," &c., would be sufficient if the document otherwise made it appear to whom these designations respectively referred. Though the law requires the signature of only the "party" to be charged, it should be remembered that in every contract of sale there are at least two parties who are each liable to be charged in respect thereof. The vendor for example may require to charge the purchaser with a liability for the price of the goods, or circumstances may force the purchaser to charge the vendor with a liability for damages for non-delivery. Each party should therefore take care that the other party signs. Signature by an agent is sufficient, but an agent who obviously has no authority cannot sign so as to bind another. An errand-boy would hardly be an agent authorised to sign, even though he was carrying a letter relating to the contract. But where a traveller calls upon a trader for an order which is eventually given to him, he is undoubtedly an agent who has authority to sign the counterpart order on behalf of, and so as to bind, his employer. If a man begins writing a document in his own hand thus: "I, John Smith, &c.," but omits to sign it, that writing of his name will be a sufficient signature. There is no necessary place for the signature other than where it relates to and dominates every part of the document, and such a place may be in any appropriate position. But the end of the document is the best place—the proper signature is better than initials; the latter may in some cases be of doubtful sufficiency, and a signature in ink or pencil is much better than a merely identifying mark.

A contract of sale is usually entered into under such circumstances that it is necessarily contained in more than one document. If an order is given to a traveller, the latter should supply the purchaser with a duplicate, and each should sign the other's copy. If the order is sent by letter or through the post, the recipient should be careful to see that it is properly signed, and

that the other necessary particulars are included in it; he should then, by return of post, write accepting, or as it is called "confirming," the order. Copies of both these documents should be kept by those sending them respectively, as in case of loss of the originals they may be valuable as secondary evidence. The following is a form of order:—

16 TRINITY STREET,
LONDON, S.E., *4th November* 1911.

To Messrs. BROWN & Co.,
14 Bullion Street, Soho, W.C.

ORDER No. 531.

DEAR SIRS,—Please supply the undermentioned goods, and charge to us strictly in conformity with the prices and instructions given, as any deviation therefrom, unless referred to and authorised by us, will be at your risk. Kindly state on invoice net and gross weights of each class of goods and measurements of each package, and on all invoices and communications herein place No. and Mark of this order.—Yours truly,

M. NICHOLS & Co.

Mark M.N. 1/25	5 cases	Marmalade, 1 lb. tins (6 dozen)	@ 3/9 per doz.
	10 „	Black Currant Jelly do.	„ 3/6 „
	5 „	Pineau Sardines, quarter tins	„ 64/- „
Bombay.	5 „	Petits Pois	„ 66/- „

To be shipped per steamer *Empress* for Bombay, South-west India Dock, sailing 20th November.

Please acknowledge receipt of this Order, and state date when goods will be ready.

Form of Confirmation Note.

14 BULLION STREET, SOHO,
LONDON, W.C., *5th November* 1911.

Messrs. M. NICHOLS & Co.

ORDER No. 531. M.N.

GENTLEMEN,—We beg to acknowledge receipt of, and to confirm your esteemed order of the 4th inst., which shall receive our best and prompt attention.

Hoping to be favoured with a continuance of your esteemed commands,—
Yours truly,

BROWN & Co.

Of land and houses.—As in the case of the sale of goods, so in the case of the sale of land and houses a special statute makes writing a necessary formality in any contract therefor. The statute is that of the reign of Charles II., and is known as the Statute of Frauds. By section 4 thereof it is enacted that no action shall be brought whereby to charge any person upon any contract or sale of *lands, tenements, hereditaments, or interest in or concerning them*, unless the agreement upon which such action shall be brought, or some memorandum thereof, shall be in writing and signed by the party to be charged therewith, or some other person thereunto by him lawfully authorised. By section 2 of the same statute a lease may be made verbally where the term created does not exceed three years, and the rent reserved is equal to at least two-thirds of the improved value of the property. But the agreement for the sale of a lease-hold holding created verbally under this section must itself be in writing.

It is sometimes apparently doubtful whether the property or interest to be sold comes within the scope of the statute, the words "interest in or concerning" being rather vague in their meaning. The following are instances of property within the meaning of the statute and requiring a written agreement. The sale or letting of a right to shoot over land, growing grass, fruit on trees, and standing timber. But if the grass, fruit, or timber is sold when separated from the land, or sold for immediate separation and delivery, the thing sold would come within the term "goods and chattels," and the requisites of an agreement for the sale thereof would be decided by the Sale of Goods Act. Growing crops, such as wheat, barley, turnips, and potatoes are also "goods and chattels."

The section of the Sale of Goods Act to which reference is specially made in the first part of this article was taken originally from section 17 of the Statute of Frauds, which latter section being repealed, section 4 of the Sale of Goods Act was substituted. As both sections 4 and 17 of the Statute of Frauds were very much on the same lines so far as the form of the requisite written agreement was concerned, it follows that what has already been said as to the form of a contract for the sale of goods may be repeated with regard to the agreement required by the section of the Statute of Frauds now under consideration. The reader should therefore refer, in this connection, to that part of the article. The two points to which attention might be here conveniently drawn are: (*a*) that a sale by auction would be a sale within the statute, and that the memorandum and signature of the auctioneer after he has knocked the property down would be a sufficient agreement to bind both vendor and purchaser; (*b*) the agreement may state that it is made subject to the title to the property being approved by the purchaser's solicitor, and will still be conclusive and complete, for the solicitor cannot unreasonably refuse to approve a good title.

In dealing with this class of property both vendor and purchaser should have the contract properly prepared by a solicitor. The law with regard to real property is much too complicated and extensive to be lightly treated by a layman, or even by a lawyer himself who is not accustomed to conveyancing practice. If therefore it is necessary to clinch the bargain on the spot, and there is no opportunity to obtain legal assistance, the following short document should be drawn up in duplicate, and each party should retain the copy signed by the other. The duty will be 6d., and may be denoted by a 6d. postage stamp cancelled by signature.

I, A. B., of &c., agree to sell to C. B., of &c., who hereby agrees to buy the freehold house [*here insert the full address of the premises*] free from incumbrances, at the price of pounds, of which C. D. has now paid pounds as deposit; the title to be approved by C. D.'s solicitor, and the purchase to be completed on the day of

Dated this day of 1910.

	[*Stamp.*]
Signature of A. B. or C. D. or both.	

If the sale is of leasehold premises, the above form could be used by omitting the words between "the" and "at" and inserting the following:—

Leasehold [premises, *or as the case may be, and describing the property fully*], of which there is now an unexpired residue of years of the term to run subject to the yearly rent of £ , and to the covenants and conditions contained in the lease, and on the lessee's part to be observed and performed.

The above forms of contract are known as "open" contracts, and the purchaser is thereunder entitled to require a title free from any defect. But it is not always that the vendor is in a position to supply this. The property may be subject to some easement or incumbrance, or the title may not be of sufficient length, or may be defective in some respect. These considerations will be dealt with more fully in the article on CONDITIONS OF SALE; and it is sufficient here to point out that a contract for sale should be so drawn as to prevent exception being taken by the purchaser to the existence or absence of some proper element in the property or its title. The following are some short forms which could be used if legal assistance is not available and there is time for them to be copied out:—

Agreement for Sale of Freeholds.

MEMORANDUM OF AGREEMENT made the day of 19 , **Between** A. B., of &c. (hereinafter called "the vendor"), of the one part, and C. D., of &c. (hereinafter called "the purchaser"), of the other part, **Whereby it is witnessed** as follows:—

1. The vendor will sell and the purchaser will purchase **All that** the lands, hereditaments, and premises [*or as the case may be*] situate, and being [*here set out the name, position, and measurements of the land, and a full and accurate description of the houses with all proper addresses*] in fee simple, subject to any easements affecting the same [and to any tenancies of the same now existing, *if there are any*] at the price of pounds, whereof pounds has been paid by the purchaser to the vendor on the signing hereof (as is hereby acknowledged) by way of deposit, and the balance is to be paid on the completion of the purchase.

2. The purchase to be completed on the day of 19 , at the office of Mr. E. F., the vendor's solicitor, whereupon possession shall be given to the purchaser, he to pay from that date all outgoings in respect of the said premises, and in case the purchase shall not be completed on the said day agreed therefor he shall pay to the vendor interest on the balance of the purchase-money at the rate of 4 per cent. per annum from the said day until completion.

3. The title to the said premises shall commence with an Indenture of Conveyance, dated the day of 18 , made between G. H. of the one part and J. K. of the other part [*or*, the title shall commence with a devise of the said premises contained in the will of L. M., dated the day of 18 , and proved in the Principal Registry on the day of 18 , and the testator shall be assumed to have been seised in fee simple of the said premises at the date of his death; *or*, the title being well known to the purchaser, &c., in the neighbourhood, the purchaser shall only require such evidence thereof as is contained in the conveyance of the said premises to the vendor;

or, the vendor having only a possessory title to the said premises, the only evidence of his title thereto which the purchaser may require shall be a statutory declaration furnished to the purchaser at his own expense, that the said premises have been held by the vendor without disturbance for the last twelve years and upwards, and such declaration shall be accepted by the purchaser as sufficient evidence that the vendor is seised in fee simple of the said premises].

4. [*If needful the following, according to the circumstances of the case*:—A certain Indenture of Reconveyance, dated the day of 18 , and made between N. O. of the one part and P. Q. of the other part, having been lost, the purchaser shall be satisfied with a plain copy thereof, and shall assume that such indenture was in fact duly executed and attested and was of the purport of the said copy.]

5. The abstract of the title shall be delivered within seven days from the date hereof, and all objections and requisitions in respect of the title or abstract shall be in writing and delivered to the vendor's solicitor within four days from delivery of the abstract, after which time all objections and requisitions not so delivered shall be deemed waived. Should the purchaser insist upon any objection or requisition which the vendor cannot or is unwilling to remove or comply with, the vendor may by notice in writing rescind this agreement and return the deposit, and the purchaser shall have no claim against the vendor for costs, damages, or otherwise.

6. In case of destruction of or damage to the said premises by fire before completion of the purchase, the monies payable under the now existing insurance thereof shall be applied in reinstatement or repair, or paid at his option to the purchaser.

7. [*Where necessary as follows*:—No objection shall be made by the purchaser to a certain Indenture of Conveyance dated the day of 18 (*a date not after the 16th May* 1888), and made between R. S. of the one part and T. U. of the other part, on the ground that the same is insufficiently stamped, and the vendor shall not be required to pay any further duty thereon.]

8. If the purchaser shall refuse or neglect to complete the purchase at the time hereby appointed, the said deposit shall be absolutely forfeited to the vendor, who shall be at liberty to resell the property, either by public auction or private contract, and the deficiency, if any, occasioned thereby, together with all losses, damages, and expenses of and attending the same and incidental thereto, shall be borne and paid by the purchaser, and be recoverable by the vendor as liquidated damages, but any increase in price shall belong to the vendor.

9. Time in all respects shall be of the essence of the contract.

As witness the hands of the said parties.

Witness:
X. Y., of &c.

6d. stamp.

Signed: {A. B.
{C. D.

Form for Leasehold Premises.

[*Clause I. of the foregoing form, after the description of the property, would be as follows*:—]

. . . held under an Indenture Lease, dated the day of 18 , and made between E. F. of the one part and G. H. of the other part, for the unexpired residue of the term of years from the day of 18 , created by the said Indenture of Lease, subject to the yearly rent of £ and to the covenants and conditions contained therein, and on the lessee's part to be performed and observed at the price, &c.

[*Clause III. of the foregoing form would commence as follows*:—]

The title to commence with the said Indenture of Lease, and the production of the receipt for the last payment of the rent due thereunder to be conclusive

evidence that all covenants and conditions therein contained have been duly observed and performed up to the date of the completion of the purchase, or that any breaches of such covenants and conditions have been waived. The said indenture having been produced to the purchaser, he shall be deemed to have had notice of all the said covenants and conditions.

CONTRIBUTION occurs where several persons are under a joint and several liability, and one or more of them having discharged the whole of it, or more than their proportionate shares, require a proportionate indemnity from the others who have not taken their proper part in the discharge. In the contract of guarantee contribution is payable as between co-sureties; in insurance between co-insurers; in carriage by sea between those who own the subject of insurance. There is no contribution legally maintainable between joint tort-feasors or wrongdoers. Thus if A. and B. jointly assault C., and B. is made to pay damages therefor, he cannot recover any proportion thereof from A., even though the latter has agreed to indemnify him. For contribution as between co-sureties *see* GUARANTEE; in insurance *see* SUBROGATION; and in cases of marine liability *see* SALVAGE.

CONTRIBUTORIES.—The term "contributory" means every person, such as a member or shareholder of a company incorporated under the Companies Acts, who is liable to contribute to its assets in the event of the company being wound up. Prior to, and in all proceedings to determine the contributories to a company, the term includes any person alleged to be a contributory. The liability to contribute is in the nature of a debt due from the contributory at the time when his liability commences, but it is only payable when the calls therefor are made; but should a contributory become bankrupt, his estate may be proved against for the estimated value of his liability to future calls as well as calls already made. Should a contributory die, his personal representatives, heirs, and devisees will be liable; and should he become bankrupt his liability will extend to his assignees. If he should abscond he may be arrested.

It will be seen from the above that a person becomes a contributory only in the event of a company being wound up. He is so called because he is liable to contribute to the assets of the company to an amount sufficient for the payment of its debts and liabilities and the costs of its winding-up. It is not necessary that a person should be a member of the company at the time of the winding-up in order to incur liability as a contributory; he may have ceased to be a member, but still be liable. The following rules should be noted: (1) No past member is liable if he has ceased to be a member for a period of one year or upwards prior to the winding-up; (2) but he is never liable in respect of any debt or liability of the company contracted after the time at which he ceased to be a member; (3) nor until the Court is satisfied that the existing members are unable to satisfy the contributions required to be made by them. But whether the contributory is a past or present member his liability to contribute can never exceed in amount the sum (if any) unpaid on the shares in respect of which he is liable; and where the company is one limited by guarantee, his liability is limited to the amount of his guarantee. In all matters relating to the winding-up, the Court may have regard to the wishes of the contributories, and may direct meetings of them to be summoned for ascertaining their wishes. A contributory may

himself petition the Court for a company to be wound up, but he would succeed only where he can show an undoubtedly just and equitable ground therefor, as for example where it is no longer possible for the company to proceed with its objects. *See* COMPANIES.

CONVEYANCING.—This is the name given to that branch of the law which deals with the transfer of property and the preparation of deeds connected therewith. The practice of conveyancing is in the hands of barristers and solicitors, there being but very few specially certificated conveyancers now remaining. Until recently the law and practice of conveyancing was extremely intricate and technical, with the result that a class of legal practitioners, known as "conveyancers," made a special study and practice of the subject. With the modern simplification of conveyancing, the old-fashioned conveyancer has practically died out. It should be noted that "every person who (not being a barrister, or a duly certificated solicitor, law agent, writer to the signet, notary public, conveyancer, special pleader, or draftsman in equity), either directly or indirectly, for or in expectation of any fee, gain, or reward, draws or prepares any instrument relating to real or personal estate, or any proceedings in law or equity, shall incur a fine of fifty pounds." So far as regards the subject of conveyancing, the word "instrument" here used may be taken to mean a document under seal, or a deed. It follows therefore that none outside the legal profession may, for reward, draw or prepare a deed relating to real or personal estate. This is really a restriction very beneficial to the public, for although, as has already been pointed out, the law and practice of conveyancing has been very much simplified by recent legislation, the subject is still much too technical and important a one to be lightly undertaken by any person who has not received a regular legal training. The principal documents with which conveyancing is concerned are those relating to MORTGAGE; PARTNERSHIP; LEASES; and WILLS. It is to these titles, therefore, that the reader should refer for further information.

COPYHOLD is the name given to lands held by copy of a Court roll. Such lands are part of a manor, and the holder is tenant of the lord of the manor; and they are said to be held by copy of a Court roll, because there is no other evidence of the tenant's title thereto than the records of the manorial Court and proper copies thereof. Originally these holdings were little more than tenancies at the will of the lord of the manor, but by long custom they have now generally acquired the character of a permanent inheritance, and so descend to the heir-at-law according to the rules that regulate the descent of freehold land. The particulars in which copyholds may be practically distinguished from freeholds are in the burdens to which they are usually liable. Of these the chief are the fines payable to the lord upon the death of the holder, the succession of the holder's heir, the alienation by sale or otherwise of the land, and upon the happening of various other events. In the records of the manorial Courts copyholds are still always expressed to be held by the tenant "at the will of the lord," although, as we have already seen, they are equivalent to freeholds except that they are subject to certain burdens and other incidents of not very practical importance. They may however be distinguished from customary freeholds, which are a class of copyhold lands

held by the tenant "according to the custom of the manor," but which are subject to much the same incidents as copyholds strictly so called. In dealing with copyholds, inquiry should be made, amongst other things, to the burdens to which they may be subject, and the limitations imposed upon the tenant in respect of leasing, mining, or other acts of ownership. Copyholds may, under certain conditions, be absolutely turned into freeholds, as to which see ENFRANCHISEMENT.

COPYRIGHT in Books (and Generally).—Copyright, for the purposes of the Copyright Act 1911 (which comes into operation in the United Kingdom on July 1, 1912, or such earlier date as may be fixed by Order in Council), means "the sole right to produce" an original literary, dramatic, musical, or artistic work" or any substantial part thereof in any material form whatsoever, to perform, or in the case of a lecture to deliver, the work or any substantial part thereof." Copyright includes "the sole right—(a) to produce, reproduce, perform, or publish any translation of the work; (b) in the case of a dramatic work, to convert it into a novel or other non-dramatic work; (c) in the case of a novel or other non-dramatic work, or of any artistic work, to convert it into a dramatic work, by way of performance in public or otherwise; (d) in the case of a literary, dramatic, or musical work, to make any record, perforated roll, cinematograph film, or other contrivance by means of which the work may be mechanically performed or delivered—and to authorise any such Acts as aforesaid."

Copyright can hardly be said to have had its origin in the common law, it being strictly speaking a creation of legislation. At the present day (i.e. when the Act comes into operation) the principal statute governing the law in respect of copyright is found in the Copyright Act of 1911 which repeals practically the whole of the previous statutes and consolidates and amends the law. The first statute on the subject was an Act of Queen Anne, but before that reign there is considerable evidence that copyright, or in other words literary property, was, as a form of property, recognised by the law. Evidence of this is found in the old charters and the registers of the Stationers' Company, from which it appears that so early as the reign of Queen Elizabeth a property in literary publication passed from one owner to the other by descent, sale, and assignment, and similar evidence may be inferred from the early Acts and Ordinances of Parliament, which by the nature of their provisions respecting printing implied some recognition of what is now called copyright. Until 1640 it was necessary to obtain a licence before any work could be printed, and this fact probably accounts for the absence in those days of any contests in courts of law respecting the right to print and publish. But whether it be by the common law or not, it may safely be stated that, from the introduction into England of the art of printing, the law has always recognised that literary compositions themselves, including the right to publish them, have always been the exclusive property of the author.

But works the substance of which are subversive of morality, opposed in a blasphemous sense to Christianity, seditious, and calculated to disturb the King's peace, are all excepted from the benefit of the law of copyright. On the other hand, the King in respect of a remnant of the prerogative of the Crown, and certain bodies such as the House of Lords, certain

universities, and the King's printers, have an exclusive but very limited privilege excepting them and certain of their publications from the restrictive operation of the law of copyright. This privilege is derived originally from the King's prerogative, but is to-day of little practical importance except so far as it includes the exclusive right possessed in perpetuity by the two universities of Oxford and Cambridge, and the King's printers in England and Scotland to print the authorised translation of the Bible. The Crown would seem to have abandoned its exclusive right to print Acts of Parliament, and consequently these may be printed by anybody. So too may the Bible if it be accompanied by, and is the subject of, a *bona fide* commentary. But with regard to Acts of Parliament the privilege of printing them is still practically monopolised by the King's printers for the time being. Those printed by any other printer would not be received as evidence in a court of law, and would be consequently valueless for that purpose. Subject to any agreement with the author the Crown has a copyright for fifty years in any work prepared or published under its direction or control.

Duration of copyright.—Copyright subsists, as a general rule, during the life of the author, and for the further term of fifty years after his death (unless previously determined by first publication elsewhere than in the parts of His Majesty's dominions to which the Act of 1911 applies), and during this period it will remain the property of the author or his assigns. It is, however, provided by the Act that at any time after the expiration of twenty-five years, or in the case of a work in which copyright subsists at the passing of the Act, thirty years from the death of the author of a published work, copyright in the work shall not be deemed to be infringed by the reproduction of the work for sale if the person reproducing the work proves that he has given the prescribed notice in writing of his intention to reproduce the work, and that he has paid in the prescribed manner to, or for the benefit of, the owner of the copyright, royalties in respect of all copies of the work sold by him calculated at the rate of 10 per cent. on the price at which he publishes the work. If the book is published after the death of its author, the copyright will endure for a term of fifty years from the first publication thereof, and the proprietor of the author's manuscript will be *prima facie* the owner of the copyright.

Should the proprietor of a copyright in any work after the death of its author refuse to republish it, or to allow its republication, complaint may be made to the Judicial Committee of the Privy Council; but it must be shown that by reason of such refusal the book is withheld from the public. The Privy Council may grant a licence to the complainant to publish the work in such manner and subject to such conditions as they may think fit, and it will be lawful for the complainant to publish the work in accordance with the terms of the licence.

In periodical works, or works published as collections or in a series of books or parts, such as encyclopædias, reviews, magazines, newspapers, or in any books in which the publisher or projector employs persons to write, on the terms that the copyright is to belong to himself, the copyright vests in the publisher or projector, after he has paid for it, in the same manner and for the same term as is given to authors of books. But in the case of essays, articles, or portions forming part of and first published in reviews, magazines, or other

periodical works of a like nature, and acquired and paid for on the terms that the copyright belongs to the publisher or projector, the latter retains the copyright; but notwithstanding this, the publisher or projector may not publish any such essay, article, or portion separately without the consent of the author or his assigns. After the expiration of the twenty-eight years the right of publishing separately such essay, article, or portion reverts to the author for the remainder of the full term of copyright.

Assignment.—Registration is not necessary under the Act of 1911. A copyright or any interest therein may be transferred by an assignment in writing signed by the owner of the right or by his agent. In like manner the owner may grant a license. A deed is not requisite. But the author, as first owner, cannot assign any interest beyond the expiration of twenty-five years from his death. He cannot (except in the case where the copyright was in existence at the time of the Act coming into operation, or of a collective work or part of a collective work) divest his legal personal representatives of this reversion of twenty-five years.

Delivery to libraries.—A copy of every copyright book may be required to be presented to each of six certain public libraries. The Bodleian Library at Oxford, the Public Library at Cambridge, the Library of the Faculty of Advocates at Edinburgh, the Library of Trinity College, Dublin, and, subject to the regulations of the Board of Trade, to the National Library of Wales, may each within twelve months after publication make a demand of the publisher for its presentation copy, and the book must be delivered within one month from demand. The books may be delivered directly to these libraries without waiting for a demand through Stationers' Hall. With regard to the library of the British Museum, it is provided that a best copy of every work, and of every second or subsequent edition which contains any additions or alterations, bound, sewed, or stitched together, and on the best paper on which the same shall be printed, is to be delivered at the British Museum within one month after its first publication, if it is published in London. There is a penalty imposed for non-delivery to the libraries; but the provision as to such delivery does not in any way affect the question of the validity of a copyright.

Infringement and remedies therefor.—(And see hereon COPYRIGHT in the Appendix). Infringement of copyright is often referred to as literary piracy, and it means such an unauthorised reproduction of a book as would interfere with, or diminish, the profit and enjoyment of the proprietor of the copyright therein. If an infringement in fact exists, it is no defence that the infringement was done without an intention to infringe, or was done without a desire for profit, as where the reproductions are distributed gratuitously. What constitutes an infringement depends in each case upon the particular facts. Even the whole of a copyright work may be lawfully reproduced if it is done *bonâ fide* with the addition of notes and observations which require the reproduction in order to set forth fairly their meaning; but an infringement would exist if the notes were merely a pretext for piracy. On the other hand, the republication of a short extract would constitute an infringement if the extract were in fact the gist of the work from which it was taken. General and reasonable quotation and extraction are always permitted; and so also is

it allowable to *bonâ fide* digest or abridge a copyright work. A digest or abridgment, if properly executed with intellectual labour and judgment, has always been held by the law to be a new and independent literary production. But this rule is only applicable to serious works of science and research; it would not be permitted in the case of a novel. Books out of copyright, or in course of running out, cannot have their copyright preserved and continued by the publication of further editions, for these later editions will be copyright only so far as they are additions to or modifications of the original work. When out of copyright, literary works are like the other facts of life, society, and nature—open to all the world as material for authorship. These facts, such as the names of streets and of the persons who live in them, the ages and habits of men, and all natural phenomena, may always be drawn upon by an author, and the results of his considerations thereon may be lawfully published by him notwithstanding the existence of copyright books on the same subjects. Thus any one may publish such works as directories, almanacs, arithmetic books, scientific text-books, and others of a like character in this respect. But the new work must be an independent one—not a copy of another. So one cannot copy even a list of brood mares as published in a Stud Book (*Weatherby* v. *International House Agency and Exchange*). It is a commonplace amongst lawyers that piracy in such books may be always discovered by the fact that the pirate has copied the mistakes of the original.

To import into the United Kingdom any foreign reprints of books in which copyright exists is an infringement, and also an offence punishable upon conviction. Those *e.g.* who, when on the Continent, are in the habit of buying an occasional Tauchnitz edition, should be careful not to bring their purchases home. The customs and excise officers may seize and destroy all such foreign reprints, and an importer who is not the owner of the copyright incurs a penalty of £10, and double the value of every copy of any book imported. This penalty is recoverable before the magistrates, and, excepting £5 thereof which goes to the officer of customs or excise who procures the conviction, is paid to the proprietor of the copyright. It is also an offence, punishable in like manner, to knowingly sell, publish, or expose for sale, or let to hire, or have in one's possession for sale or hire, any such wrongfully imported reprint.

Where a copyright is infringed, the proprietor may sue the pirate for damages. He may also recover the pirated copies, or damages for their detention; and he may also obtain an injunction against further publication of the pirated reprints. *See* also hereon: CONTRABAND; DESIGNS; ENGRAVINGS AND PAINTINGS; MUSICAL AND DRAMATIC COPYRIGHT; SCULPTURE.

The Statute of 1911.—This statute is an attempt to consolidate the law of copyright for the United Kingdom, and also to impose one copyright law throughout the British Empire. How far the object of the Act will be attained, as regards its adoption in the colonies, must depend upon their own action. Some very important amendments to the law are introduced. Thus, the duration of the term of copyright is extended to the life of the author, and a period of fifty years after his death; the author cannot alienate from his estate the last twenty-five years of the term; the works of joint authors are specially dealt with—where a married woman and her husband are joint authors of a work her interest is her separate property; architectural work, cinematographs, and mechanical instruments for the

production of sound, are specifically dealt with; registration is no longer necessary; and provision is made for more valuable international arrangements. The statute, being a code, sets out clearly and exhaustively the rights and remedies of persons interested in the subject, and so can easily be comprehended. Here, in this work, the Act having been passed as this edition was passing through the press, it is impossible to give its provisions in any detail. Particular reference is made, however, either here or in other articles relating to the subject, to certain of the most important.

In introducing the Bill the President of the Board of Trade stated that "the works brought under copyright are original literary, musical, dramatic, or artistic work; and we adopt the Berlin proposal to give copyright on the first publication of the work in this country or simultaneous publication in this and another country. As far as new rights are given under the Bill protection is given to existing rights against arbitrary action by the owner of the copyright. On the other hand, we protect ourselves against unfair treatment by a clause which enables us to withhold the privilege of first publication in the event of another country not giving adequate treatment to our authors."

Architecture.—An "architectural work of art" may now be protected. The expression means any building or structure having an artistic character or design, in respect of such character or design, or any model for such building or structure. But the protection is confined to the artistic character and design, and does not extend to processes or methods of construction.

Cinematograph.—Any work produced by any process analogous to cinematography.

Mechanical Instruments for the production of sound are the subject of a long and detailed section—19. The copyright subsists in records, perforated rolls, and other contrivances by means of which sounds may be mechanically produced, in like manner as if such contrivances were musical works. The term of copyright in this instance is only fifty years from the making of the original plate from which the contrivance was produced. Any music may be reproduced, without infringement, by mechanical instruments, although the owner of the copyright in the music may object, if proper notice is first given and royalties paid in accordance with the provisions of the Act.

Infringement is now defined by statute as the doing of anything by another, without the consent of the owner of the copyright, the sole right to do which belongs to the owner. But the following acts do not constitute an infringement:—(i) Any fair dealing with any work for the purposes of private study, research, criticism, review, or newspaper summary. (ii) Where the author of an artistic work is not the owner of the copyright therein, the use by the author of any mould, cast, sketch, plan, model, or study made by him for the purpose of the work, provided that he does not thereby repeat or imitate the main design of that work. (iii) The making or publishing of paintings, drawings, engravings, or photographs of a work of sculpture or artistic craftsmanship, if permanently situate in a public place or building, or the making or publishing of paintings, drawings, engravings, or photographs (which are not in the nature of architectural drawings or plans) of any architectural work of art. (iv) The publication in a collection, mainly composed of non-copyright matter, *bonâ fide* intended for the use of schools, and so described in the title and in any advertisements issued by the publisher,

of short passages from published literary works not themselves published for the use of schools in which copyright subsists. Provided that not more than two of such passages from works by the same author are published by the same publisher within five years, and that the source from which such passages are taken is acknowledged. (v) Public lectures [for conditions of reporting these, see NEWSPAPERS]. (vi) The reading or recitation in public by one person of any reasonable extract from any published work. Selling, hiring, distributing, exhibiting, or importing a copyright work, for trade purposes, constitutes an infringement, if done with knowledge of the infringement. The owner of a place of entertainment may be liable for an infringement, as stated in the articles on MUSICAL AND DRAMATIC COPYRIGHT.

Remedies for infringement are provided, either in the civil courts for damages and injunctions, or in the criminal courts for penalties and punishment.

CORNER.—It is possible in almost every market for a very wealthy speculator or syndicate of speculators to "corner" it, that is to say, to acquire so important a holding of the stock dealt in as to be in a position to dominate the market and fix the price themselves. Cornering operations have been attempted, and often very successfully, in a great variety of markets. In the produce market, the oil market, the metal market, and in the stock and share market, as well as in many others, corners have at different times been effected, and some markets are always under their influence. The principle of a cornering operation is a very simple one, and it is often no more complex when applied to a world market than when applied to a local market. If there is only a fixed quantity of a certain commodity available in a certain market, it follows that if the whole of that commodity is in the hands of one owner, or one group of owners, the price at which it can be bought may, within certain limits, be arbitrarily fixed by them. The nearer the commodity approaches towards being an absolute necessity of life, the wider are those limits and the higher the price that can be fixed. Corn is a primary necessity, but the supplies are so extensive that to successfully corner it is very difficult, and has proved up to the present to be impossible. But such an article as copper, for example, which is relatively as great a necessity in modern life as bread, has been, and is in fact always, the subject of corner operations. The sources of supply are comparatively limited, and are accurately known to those interested in this market; on the other hand, the probable demand may be fairly accurately estimated. The result is that whenever the price of copper begins to fall below a certain figure, as the result of some little attempt at free competition between supply and demand in the open market, the copper magnates—those who own the sources of the bulk of the supply—at once restrict the output until prices rise sufficiently high to satisfy them. Should an additional source of supply equal to that already in existence be discovered by others who had sufficient financial strength to compete with the magnates already in the field, prices would fall and the corner would be at an end. To corner that market, again, would mean that those who wished to do so would have to control those additional sources as well as those already in existence.

On the Stock Exchange the principle of a corner is the same. The promoters of the corner get into their hands the bulk of the shares issued in a

certain company. It may be that they have been gradually buying them in, or it may be that they are the shares which have been left on their hands when the company was floated. However that may be, take the case of shares of which 120,000 is the total number issued. Of these only 10,000 have been taken up by the public, the other 110,000 being left in the hands of the promoters. By carefully working the market—"rigging" the market as it is called—and also most probably by carefully impressing the public through newspaper paragraphs that these shares are a "good thing," the prices of the shares keep rising until eventually there is a considerable amount of speculation in them on the part of the public. Once the public have begun to look upon these shares as a good field for speculation, the promoters of the corner, with the aid of judicious rumour and more press paragraphs, suggest a possible fall in the price. This rouses an extensive bear speculation, and when this deals with a sufficient number of shares—more than the 10,000 which is all that the public have—the promoters of the corner, on settlement-day, demand delivery of the shares. But as more shares have been sold than there are actually in the market, the individual bears, after bidding against one another in order to obtain what they require of the available 10,000 shares, and so assisting to run up even the price of those, are bound to capitulate to the corner, and pay whatever price is demanded in order to escape their obligation to perform the impossible, viz. to deliver shares which they have not got and which are not anywhere for sale. At the time of capitulation they may be required to pay perhaps £25 for a £1 share—at any rate they are bound to pay what the promoters of the corner demand. The moral of all this is that speculation on the Stock Exchange, in purely speculative shares, is a very dangerous pastime. The outside public can never know exactly what power is at work behind the scenes, moving prices to suit its own purposes and regardless of either bull or bear speculator except so far as he is its tool. *See* also RIGGING THE MARKET.

CORONERS.—The office of a coroner is a very ancient and important one. Next to the sheriff he is the most important civil officer in the county, and he performs the duty of the sheriff when the sheriff is disabled from doing so. There are many peculiar duties ascribed to him, of which two only are valid and subsisting at the present day, viz. an inquiry into the manner in which persons have come to their deaths where there is any reason to suppose that may not have been by natural means, and an inquiry respecting treasure-trove. He has no jurisdiction in cases of fire, nor in respect of criminal matters as he had in mediæval times, nor is he any longer a custodian of the pleas of the Crown. His jurisdiction with regard to treasure-trove is limited to the determination of "who was the finder, and who was suspected thereof;" he has no jurisdiction to determine a question of title between the Crown and any other claimant. The office of a coroner does not exist in Scotland. In England he is appointed for a county by the County Council, and for a county borough which has separate Quarter Sessions, by the council thereof. Boroughs without such sessions are within the district of the county coroner. A coroner must reside within his district, or not more than two miles out of it. He may appoint a deputy, who in counties should be either a legally qualified legal or medical practitioner; or in boroughs a barrister or solicitor.

The Inquest.—An inquest must be held whenever a coroner is informed that the dead body of a person is lying within his jurisdiction, and there is reasonable cause to suspect that such person has died either a violent or an unnatural death, or has died a sudden death of which the cause is unknown, or that such person has died in prison, or in such place or under such circumstances as to require an inquest in pursuance of any statute. There must be a jury of not less than twelve, or more than twenty-three, "good and lawful men." If the inquest is on the body of a prisoner, an officer of the prison or a prisoner may not be a juror. The jury itself has an important part to play in the inquest, for it is sworn "diligently to inquire touching the death of the person on whose body the inquest is about to be held, and a true verdict to give according to the evidence." The coroner and jury are required to view the body at the first sitting of the inquest; and the coroner must examine on oath, touching the death, all persons who tender their evidence respecting the facts, and all persons having knowledge of the facts whom he thinks it expedient to examine. In a case of murder or manslaughter, the evidence of the witnesses should be taken down in writing and signed by them and the coroner. The jury are required to certify their verdict in writing, setting forth, so far as such particulars have been proved to them, who the deceased was, and how, when, and where he came by his death; and if he came by his death by murder or manslaughter, the persons, if any, whom the jury find to have been guilty of such murder or manslaughter, or of being accessories before the fact to the murder. Should twelve at least of the jury fail to agree on their verdict, the coroner may adjourn the inquest to the next assizes, when the judge thereof will charge them as to the facts. If they continue to disagree, they may be discharged without giving a verdict. The jury accordingly need not be unanimous in their verdict provided a majority of twelve in all is in its favour.

In case the verdict charges any person with murder, the coroner must issue a warrant for the arrest of the person charged, and bind over all the witnesses to appear at the trial. The same procedure would be adopted in a case of manslaughter, except that the coroner may take bail for the person charged. If (*a*) a coroner refuses or neglects to hold an inquest which ought to be held; or (*b*) an inquest has been held by a coroner that by reason of fraud, rejection of evidence, irregularity of proceedings, insufficiency of inquiry, or otherwise, it is necessary or desirable in the interests of justice for another inquest to be held; the High Court may order the inquest to be held again, or another to be held, as the case may be. Only the coroner within whose jurisdiction the body of a person upon whose death an inquest ought to be held is lying, can hold the inquest. If a body is found dead in the sea, or any creek, river, or navigable canal within the flowing of the sea, where there is no deputy Admiralty coroner, the inquest shall be held only by the coroner having jurisdiction in the place where the body is first brought to land.

Liabilities of Coroner.—A coroner may be removed by the Lord Chancellor in case of inability or misbehaviour in the discharge of his duty. To be guilty of extortion or of corruption, or of wilful neglect of his duty, or of misbehaviour in the discharge of his duty, is in a coroner a misdemeanour. He must not act as coroner and solicitor in the same case; nor

may he be neglectful in the matter of inquisitions, depositions, and recognisances.

Procedure at Inquests.—In the case of murder and manslaughter the inquisition of the jurors and the coroner must be not only in writing, but under seal and on parchment. After the inquest the coroner must send particulars of the death to the local registrar of deaths. Any person who is charged by a coroner's jury with murder or manslaughter is entitled to have copies of the inquisition and of the depositions of the witnesses at the inquest. The charge of these copies must not exceed the rate of three-halfpence for every folio of ninety words. After a view of the body the coroner may order it to be buried before verdict, and before registry of death. A relative of the deceased, or any person under liability to register the death, is entitled to this order. Where a person duly summoned as a juror at an inquest does not, after being openly called three times, appear to the summons, or appearing, refuses without reasonable excuse to serve as a juror, the coroner may impose upon him a fine not exceeding five pounds. When a witness fails to attend after being duly summoned, the fine is forty shillings. Apart from this power to fine a defaulting juryman or witness, the coroner has power to commit him to prison in the same manner as he may any other person who is guilty of contempt of his court.

Medical witnesses and post-mortems.—Where it appears to the coroner that the deceased was attended at the death or during his last illness by a legally qualified medical practitioner, he may summon the medical practitioner as a witness. If the deceased was not so attended, the coroner may summon any medical practitioner in actual practice in or near the place where the death happened, to give evidence as to how, in his opinion, the deceased came to his death. Such a medical witness may be directed to make a post-mortem examination of the body of the deceased, with or without an analysis of the contents of the stomach or intestines. But if any person should state upon oath before the coroner that in his belief the death of the deceased was caused partly or entirely by the improper or negligent treatment of a medical practitioner or other person, that medical practitioner or other person will not be allowed to perform or assist at the post-mortem examination of the deceased. Should the majority of the jury be of opinion that the cause of death has not been satisfactorily explained by the evidence of the medical practitioner or other witnesses brought before them, they are entitled to require the coroner in writing to summon as a witness some other legally qualified medical practitioner to be named by them, and direct a post-mortem examination of the deceased, with or without an analysis of the contents of the stomach or intestines, to be made by the last-mentioned practitioner, and that whether a post-mortem examination has been made or not. If the coroner should not comply with this requisition he will be guilty of a misdemeanour. A medical practitioner who fails to obey a summons may be prosecuted by the coroner before the magistrates and fined five pounds.

Fees to medical witnesses.—A legally qualified medical practitioner who has attended at a coroner's inquest in obedience to a summons of the coroner is entitled to receive remuneration as follows:—(*a*) For attending to give evidence at any inquest whereat no post-mortem examination has

been made by him—one guinea; (*b*) For making a post-mortem examination of the body of the deceased, with or without an analysis of the contents of the stomach or intestines, and for attending to give evidence thereon—two guineas. But no fee or remuneration will be paid to a medical practitioner for the performance of a post-mortem examination instituted without the previous direction of the coroner. And where an inquest is held on the body of a person who has died in a county or other lunatic asylum, or in a public hospital, infirmary, or other medical institution, or in a building or place belonging thereto or used for the reception of patients thereof, whether the same be supported by endowments or by voluntary subscriptions, the medical officer whose duty it may have been to attend the deceased person as a medical officer of such institution will not be entitled to any fee or remuneration.

CORPORATIONS.—A corporation, or body-corporate, is a fictitious person created by the law; the object being the constitution of a body which has the capacity for perpetual existence without regard to the casualties to which individuals are subject, but which is able nevertheless to act as though it were an individual. Corporations are either *sole* or *aggregate*. Instances of corporations sole are found in the king, a bishop, or a vicar; but such corporations are not altogether within the terms of our definition, nor do they strictly satisfy the legal requirements of a corporation. The corporations to which attention is here specially drawn are those known as corporations aggregate; examples of these are found in a University, a society such as the Royal Society, the Bank of England, a municipal corporation, a chartered company such as the British South Africa Company, and a company registered under the Companies Acts. A corporation can only be created by the Crown—by letters patent or charter—or by special Act of Parliament, or in accordance with the provisions of a general Act such as the Companies Acts. A corporation may, however, be created by implication of law, as where a statute creates a body having the attributes of a corporation. There are also corporations in existence which have arisen by custom, as in the case of churchwardens or by prescription.

To a corporation aggregate are attached the following principal incidents:—(1) It may purchase, convey, and hold property, both real and personal, in perpetual succession; that is to say, the property continues to belong to it although its individual membership increases or decreases as a consequence of new appointments, admittances, deaths, resignations, or otherwise; (2) Its corporate acts are, in practically all cases, testified by and only valid under its common seal. The seal represents the acts of the corporation to those it deals with; to them it is a matter of no concern what the members of the corporation may themselves have thought about any particular act before the seal was authorised to be used; (3) Its corporate name is the proper and the only style under which it may enter into contracts or become a party to any legal proceedings; (4) It enacts regulations, such as the articles of association of a registered company, and these regulations are always binding upon its own members, and in some cases on strangers also. Regulations in the nature of bye-laws, as in the case of those of a railway company, are designedly binding upon strangers. The power of a corporation

to make these regulations is limited by the authority contained in its charter, special act, the Companies Acts, or its memorandum of association, as the case may be; any regulations it should make in excess of that power would be called *ultra vires*, and would be invalid; (5) Subject to any special provision in that respect contained in the source of its existence, a corporation acts by a majority of its members, and their decision is binding upon them all; (6) So long as the acts of the corporation are consistent with its powers, its members are not personally responsible therefor, except so far as they have personally and expressly authorised and directed acts which have resulted in injury to others; (7) Conversely, a corporation is not liable for the independent and personal acts and defaults of its members. And *see* COMPANIES; MORTMAIN; ULTRA VIRES.

CORRUPT COMMISSIONS. *See* APPENDIX.

CORRUPT PRACTICES at Parliamentary Elections.—A corrupt practice at such an election means any one of the following offences:—(1) bribery; (2) treating; (3) undue influence; (4) personation, and aiding, abetting, counselling, and procuring the commission of the offence of personation; and (5) knowingly making a false declaration as to election expenses. The punishment to which a person is subject who is guilty of corrupt practices may be, in the case of bribing, treating, or undue influence, upon conviction upon indictment therefor, imprisonment for twelve months with hard labour, or payment of a fine of £200. Personation is a felony, punishable with two years' imprisonment with hard labour. In addition to this punishment, a personator is incapacitated from voting or holding any public office for seven years, and if he is an agent in the election, the election may be rendered void and his candidate lose his seat. For the other offences of bribery, treating, undue influence, or a false declaration, the offender, in addition to punishment as above, and as hereinafter mentioned for the last offence, is disqualified from voting for seven years, and will be removed from, and disqualified from holding during that period, any public office. If a candidate, he loses his seat if elected, and may never afterwards represent the constituency. If an agent, the election will be void, and the candidate disqualified for seven years. The offender may also be required to pay the expenses of an inquiry into the conduct of the election.

Bribery.—The person who receives a bribe, or bargains for employment or reward in consideration of his vote, is equally guilty of bribery with the party who offers or gives the bribe. Bribery is possible in an infinite variety of forms. To give employment—temporary or permanent—to a voter in order to influence him, and to any other person with like intent if it does influence him, is bribery. So may be the payment of the travelling expenses of voters; or giving to workmen a paid holiday with the real object of influencing their votes; or with a like object paying the rates of a voter; or with a like object subscribing to charities.

By statute there are distinguished seven classes of bribery, the first five of which are cases of giving, and the last two of receiving, bribes. They are shortly as follows; but in the statute itself the wording is much wider and more extensive in its application than here given, including as it does the most indirect and apparently *bonâ fide* actions and methods of procedure:—(1) To give, lend, or agree to give or lend, or offer, promise, or promise to procure or to endeavour to procure, any money or valuable consideration

to or for any one, to induce any voter to vote or refrain from voting. (2) To give or procure, or agree to give or procure, or offer, promise, or promise to procure or to endeavour to procure, any office, place, or employment to any one, to induce voting or abstention from voting. (3) In like manner and with similar objects to make any gift, loan, offer, promise, or agreement to any one. (4) Any person who in consequence of such a gift, &c., procures or engages, promises or endeavours to procure the return of any person to serve in Parliament, or the vote of any voter at any election. (5) To advance or pay money to any person with the intent that it shall be used in bribery. (6) To receive, agree, or contract for, any money, gift, loan, or valuable consideration, office place, or employment for any one, for voting or refraining from voting. (7) After an election, to receive any money or valuable consideration on account of any person having voted, or refrained from voting, or having induced any other person to vote or refrain therefrom.

Treating is an offence both in the giver and the receiver. To constitute it the eating and drinking must have been supplied, in order to influence voting, at the expense or upon the credit of the candidate, either by his authority or by the authority of one or more of his agents. The gift of the smallest amount of food and drink will avoid an election if given with the intention of influencing votes. But neither the candidate nor any person with his authority is a necessary party to treating; for the offence is the same if any independent person either before, during, or after an election, directly or indirectly treats any other person—whether a voter or not—with the object of influencing votes. Even *bonâ fide* workers in the election cannot be provided with refreshment by the candidate or his agents.

Undue influence.—Every person is guilty of undue influence who directly or indirectly, by himself or by any other person on his behalf, makes use of, or threatens to make use of any force, violence, or restraint, or inflicts or threatens to inflict by himself or by any other person any temporal or spiritual injury, damage, harm, or loss upon or against any person, in order to induce or compel such person to vote or refrain from voting, or on account of such person having voted or refrained from voting at any election, or who by abduction, duress, or any fraudulent device or contrivance impedes the free exercise of the franchise of any elector, or thereby compels, induces, or prevails upon any elector either to give or to refrain from giving his vote at any election. Wide as the wording of this definition is, it does not refer to any general intimidation; it is limited to the personal and direct intimidation of the individual votes. It reaches, however, cases of dismissal of servants, withdrawal of custom from a tradesman, threats of eviction, and other cases of a similar nature. But it does not pretend to restrain the legitimate exercise of legal rights.

Personation consists in corruptly applying for a ballot-paper in any name other than that of the applicant; or applying in his own name for a second ballot-paper after he has already voted. An innocent personation, one which is merely the result of a *bonâ fide* mistake, is not a corrupt practice.

False declaration of election expenses.—Should any candidate or election agent make a false declaration as to his election expenses, he will on conviction thereof be punished as for wilful and corrupt perjury.

At municipal and other elections the law as to corrupt practices is the same as that relating to Parliamentary elections; but it is contained in the

Municipal Corporations Act, 1882, and the Municipal Elections (Corrupt and Illegal Practices) Acts, 1884 and 1911, whereas Parliamentary elections are governed by the Parliamentary Election Act, 1868, and the Corrupt and Illegal Practices Prevention Act, 1883. *See* further hereon: BALLOT; CANVASSING; CANDIDATE; ELECTION; CORRUPT PRACTICES (in Appendix); ELECTION AGENT.

COUNTY COURTS.—The County Court system in England can be traced back so far as the days of Alfred the Great, who is said to have established the *shire moot.* It is from this ancient court, more lately to be known as the sheriff's court, that the modern County Court may trace its descent. But the county courts of to-day are exclusively the creation of statute. They are regulated by the County Courts Act, 1888, together with its amending Acts, and particularly that of 1903, and by many other Acts which have relegated various special matters and causes to their jurisdiction. Such matters and causes—to refer to a very few—are connected with coal mines, explosives, the regulation of railways, inebriates, lunatics, allotments, distress for rent, customs, enclosures, municipal elections, infants, charities, settled land, probate, factories, employers' liability, workmen's compensation, agricultural holdings, building and friendly societies, merchant shipping, Admiralty, and trusts and trustees.

Apart from these special matters *the jurisdiction* (as of right) *of a County Court* is limited in *personal actions* to cases where the debt, demand, or damage claimed is not more than £100, whether on a balance of account or otherwise. Personal actions are those in which a man claims a debt or personal duty, or damages in lieu thereof; and they also include those in which any one claims a satisfaction in damages for some injury done to his person or property. Where, however, the title to any corporeal or incorporeal hereditaments comes into question, or where an easement or licence is claimed, the court would have no jurisdiction if the yearly rent or value thereof exceeds £100. County Courts are, moreover, unable to try actions for breach of promise of marriage, libel, slander, or seduction, unless the actions, having been commenced in the High Court, have been remitted to a County Court for trial. Nor can they, except by consent of the parties, try cases in which the title to any toll, fair, market, patent, or other franchise is in question. A plaintiff whose claim exceeds £100, but who desires to proceed in a County Court, may do so by abandoning the excess; but in such a case the judgment in the action will bar any further proceedings for the recovery of the abandoned excess. By agreement in writing between the parties a County Court may have jurisdiction without limit in any action assigned to the King's Bench Division.

Besides the above general jurisdiction in personal actions, a County Court has jurisdiction to grant to the landlord possession of small tenements where the tenants are wrongfully holding over. This jurisdiction will be described in the article on SMALL TENEMENTS; and under the heading RECOVERY OF LAND will be found an outline of the County Court procedure in actions therefor. The court has also jurisdiction in cases founded upon an alleged wrongful taking of cattle and goods; the procedure herein will be described in the article on REPLEVIN.

We will now set out the *equitable jurisdiction* of a County Court, which takes cognizances of actions and matters relating to administration, the execution of trusts, foreclosure and redemption of mortgages, specific

performance of contracts, partnerships, fraud and mistake, the maintenance, &c., of infants, and the relief and advice of trustees. In administration actions, which are those by creditors, legatees (whether specific, pecuniary, or residuary), devisees (whether in trust or otherwise), heirs-at-law, or next-of-kin, for the administration of the estate of a deceased, the jurisdiction of a County Court is limited to cases in which the personal or real, or personal and real estate against or for an account or administration of which the demand may be made, does not exceed in amount or value the sum of £500. If both the plaintiff and the defendant dwell or carry on business within one or more of the Metropolitan districts, the action must be commenced either in the court of the district in which the plaintiff dwells or carries on business, or in that in which the defendant dwells or carries on business. In other cases the action must be commenced either in the court within the district of which the deceased had his last place of abode, or in the court of the district in which one of the executors or administrators has his place of abode. In actions relating to the execution of trusts, the jurisdiction of the courts is limited to cases where the trust estate or fund does not exceed in amount or value £500. In actions for foreclosure or redemption, or for enforcing any charge or lien, the amount of the mortgage, charge, or lien must not exceed £500. And so in actions for specific performance—for enforcing the specific performance of or the delivering up or cancelling of any agreement for the sale, purchase, or lease of any property—the purchase-money in the case of a sale or purchase, or the value of the property in the case of a lease, must not exceed £500. In such actions a County Court may award damages. The same amount also limits the jurisdiction in partnership actions—actions for the dissolution or winding-up of any partnership—for the purpose of which the whole of the property, stock, and credits of the partnership must be included in the calculation; and the estate or fund against which relief is sought in cases of fraud or mistake must not exceed in amount or value the sum of £500.

Employers' Liability and Workmen's Compensation.—In respect of actions and proceedings for claims for damages under these Acts the County Courts have no limit to their jurisdiction—on the contrary, they are the only courts in England in which such actions may be commenced, though under certain circumstances an action under the Employers' Liability Act may be removed into the High Court.

Bills of Exchange.—A jurisdiction very important to men of business is preserved to the County Courts under the Bills of Exchange Act, 1855, in respect of proceedings for the recovery of bills of exchange and promissory notes, where the sum claimed is not less than £10, and does not exceed £50. If a creditor wishes to avail himself of the benefit of this Act, he must commence proceedings not later than six months after the bill or note has become due and payable. The general practice of the court is the same as in other proceedings of a like nature, but a specified form of summons is required to be issued, and the particulars of the claim should fulfil certain conditions, the chief of which is that there should be set out therein a true copy of the bill of exchange. The service of the summons must be personal upon the defendant, and he has twelve days from the date thereof wherein to appear and enter a defence. Failing such an appearance the plaintiff is entitled to

judgment against the defendant. In the case of other summonses in a County Court to which special appearance is necessary, the defendant may appear without leave of the court, and so may postpone the day of judgment. But in the case of a bill of exchange summons, the defendant in order to obtain leave to defend must, within twelve days after service of the summons, apply for leave to the judge, or in his absence the registrar. Should he pay the sum claimed into court, he may obtain leave to defend with comparatively little difficulty; but failing such a payment into court, he will only be able to obtain leave if, by an affidavit setting forth the facts of the case, he can satisfy the judge or registrar that he has a good defence to the action. If leave to defend is granted, the registrar will appoint the first convenient sitting of the court for the trial of the action, and so afford the defendant as little opportunity as possible to delay the plaintiff.

Jurisdiction as to place.—We have already glanced at the extent of the jurisdiction of a County Court from the point of view of the subject-matter of the action; it now remains to notice the geographical jurisdictions of the court. For the purposes of the County Courts in England and Wales, the country is divided into districts, in each of which is held from time to time a County Court whose jurisdiction is practically confined to its own district. Where therefore a plaintiff resides in one place and a defendant in another, it becomes an important question whether they both reside in the same County Court district, or whether they each reside in different districts. If they both reside in the same district then obviously the court of that district is the court having jurisdiction over both; but if their districts are different the County Court rules must determine the appropriate court. Generally speaking, every action or matter may be commenced in the court within the district of which the defendant or one of the defendants dwells or carries on his business at the time of commencing the action or matter. But an action may also be commenced, by leave of the judge or registrar, in the court within the district of which the defendant or one of the defendants dwelt or carried on business, at any time within six calendar months before the time of the commencement. With a like leave, the action may be commenced in the court in the district of which the cause of action or claim wholly or in part arose.

There are accordingly three possible sets of circumstances which may determine the appropriate court; and as the plaintiff naturally wishes to proceed in the court of the district in which he lives or carries on business, and so save his own time and expense, he would carefully regard the rules on this subject. Perhaps a consideration of a few points in connection with the above rules will not be useless. First, as to the districts referred to. An index of these districts is published by H.M. Stationery Office, and may be obtained through any bookseller, which shows the name of every parish, township, or place in the kingdom, and the court in the district of which it is situate; but any particular information as to the district of a specified place may always be obtained upon inquiry at the office of the registrar of a County Court. Now as to the place of abode or of business. A man who against his will is incarcerated in prison is not considered, for the purpose of determining the County Court district, to have his abode there. A company is supposed to dwell at the place where it substantially carries on business—not necessarily

at the place where its registered office is situate. If a man has two or more permanent places of abode he may be sued in the court of the district of either of them; but this would not be so where any of his addresses were merely temporary.

The district wherein a man carries on business is not always easily ascertained. Thus a doctor would be held to carry on business in a district where he daily attends patients, even though his place of residence is in another district; but, on the other hand, a contractor would not be considered to carry on business in a district where he has erected workshops near works on which he is engaged, if he has at the same time a permanent place of business elsewhere. In such cases permanence would probably be the true test. But permanence would not be the only test; for in the case of an employee, a clerk would not be held to be carrying on business in his master's office, nor a shopman at his master's shop. A railway, pier, or dock company would carry on business in the district in which its principal office is situate, or in that in which is situate the office in which its substantial business is carried on. A manufacturing company would carry on business where the goods are manufactured; a selling company where the goods are sold.

Whether or no *a material part of the cause of action* has arisen within a certain district is often an important question. In the case of an action for the price of goods sold and delivered, the whole cause of action may be divided into a number of material parts, and the court in the district of which any of those parts has arisen would have jurisdiction to decide the whole action. Such an action would be one based upon contract, and the contract could be composed of (*a*) the order for the goods; (*b*) their delivery; and (*c*) the payment therefor. Wherever the order has been given, there proceedings may be taken; and so also wherever the goods are delivered, whether to the vendor, or to his agent, as for example to a carrier paid by the vendee. But if the delivery is made to the vendee by a carrier paid by the vendor, the delivery of the goods for the purpose of determining the appropriate court would be at the place where the actual delivery of the goods is effected. It may be stated as a general rule that the debtor is always under an obligation to pay the creditor at the place of abode or business of the latter; the consequence of this is that, apart from special agreement to the contrary, the purchaser of the goods should pay the price therefor at the seller's place of business. It is therefore apparent from the above that in all transactions of sale of goods in the usual course of business, the vendor should generally be in a position to select the County Court of the district in which he resides wherein to take proceedings against the debtor. In fact the whole subject may be summed up in the statement that any court would have jurisdiction if a contract has been made or broken in its district. By being made, is meant that some act has been done in respect of the contract without the doing of which the contract would not have been complete; and by being broken, that some act has been done, or omitted to be done, without which the contract would not have been broken. If contracts are entered into by letter or telegram, the letter or telegram will be considered as an agent of the sender, so that delivery of the document will be the same as delivery by the sender of a personal message.

Practice and Procedure.—*Parties to an action.*—All persons may be joined in one action as plaintiffs in whom any right to relief in respect to the same transaction, or series of transactions, is alleged to exist, whether jointly, severally, or in the alternative, where if such persons brought separate actions, any common question of law or fact would arise. But if upon the application of any defendant it appears that such a joinder embarrasses or delays the trial, the judge may order separate trials, or make such other order as may be expedient. Judgment can be given for such one or more of the plaintiffs as are found entitled to relief, for such relief as they are entitled to. A defendant, even if unsuccessful, is entitled to any extra costs he may have incurred through the improper joinder of plaintiffs. As in the case of plaintiffs, any persons may be similarly joined as defendants, even though they are not each interested in all of the relief claimed. The plaintiff has the option of joining as parties to the same action all or any of the persons, or jointly and severally, liable on any one contract, including parties to bills of exchange and promissory notes; and if he is in doubt as to the parties from whom he is entitled to redress, he may join as many defendants as he thinks necessary with the object of determining their respective liability as between all the parties. Trustees, executors, and others suing in a like representative character may do so without joining as plaintiffs the parties beneficially interested; and generally where parties are numerous, one or more may sue, or be sued, or defend for the benefit of all. Infants sue as plaintiffs by their next friends; and as defendants, defend by guardians appointed for that purpose. Partners may sue or be sued in the name of the respective firms, if any, existing at the time of the accruing of the action; but a party to the action may obtain through the registrar a statement of the names of the persons who were at the time of the accruing of the cause of action co-partners in any such firm. Defendants can obtain the names and addresses of a plaintiff partnership firm by writing demanding the same from the plaintiffs, and should the latter fail to comply with the demand the judge may order the proceedings to be stayed. Should a person carry on business in a name or style other than his own, he may be sued in such name or style as if it were a firm name.

Joinder of causes of action.—Except by leave of the court, the only causes of action which may be joined with an action for recovery of land are the following:—Claims in respect of mesne profits, arrears of rent or double value in respect of the premises claimed, damages for breach of any contract under which the premises are held, or for any wrong or injury thereto. Except with a like leave a trustee in bankruptcy may not join a claim of his as such, with a claim by him in any other capacity. But apart from the above, a plaintiff may unite in the same action several causes of action without leave of the court. United or joined claims may be ordered by the judge to be tried separately.

Commencement of action.—The general rule is that all proceedings authorised to be commenced in a County Court are to be commenced by the entry of a plaint, and shall be called actions. If the parties have agreed to trial in a County Court of an action outside the court's jurisdiction, a memorandum of the consent must be filed upon entering the plaint. The plaint is entered by the plaintiff attending at the County Court office and filling up

a form, called the præcipe, with particulars of his full name and address, as also those of the defendant, and with a short statement of the cause of action, or remedy or relief sought, and the amount of the debt or damages claimed. Should the plaintiff be the assignee of a debt, he must also state the name, address, and description of the assignor; such a plaintiff is not entitled to issue a default summons. There are two kinds of summonses usually issued by a County Court, one of which is called an ordinary summons and the other a default summons; these will be distinguished later on. But here it may be mentioned that a default summons may at the option of the plaintiff be served by himself upon the defendant, a course which is recommended when the plaintiff has special opportunities for approaching the defendant. Service of summonses by the bailiffs of the court is often a matter of considerable time, and by effecting service himself a plaintiff will often prevent an irritating delay. Where service is desired out of England or Wales, the summons will not be issued until the plaintiff has secured, by deposit of money or otherwise, the possible costs which would be payable to the defendant if the latter succeeded. A plaint may be entered by letter from the plaintiff, who in such a case should, together with the necessary particulars, remit to the registrar of the court a post-office order for the amount of the fees, and also enclose a stamped addressed envelope for a reply.

In order to issue a summons to be served upon a defendant who is not within the district of the issuing court, the plaintiff must obtain leave so to do. This leave will be granted upon the plaintiff filing an affidavit in accordance with the forms provided by the court, and which affidavit must show that some material part of the cause of action, as explained above, has arisen within the district of the court in which it is proposed to issue the summons.

Particulars and statement of claim.—At the entry of the plaint in every action the plaintiff must file particulars of his claim or demand. In these particulars he is required to specify the cause of action in respect of which the action is brought, as well as the pecuniary or other claims he seeks to establish. *These particulars are not, however, required where the action is brought by ordinary summons for debt or damages only, and the same do not exceed forty shillings.* If he has more than one cause of action, the plaintiff must state in his particulars the ground of each claim separately. The defendant may, in all actions, at any time not later than five clear days before the day fixed for the trial of the action, give notice to the plaintiff that he requires further particulars; these the plaintiff must furnish within two clear days from the service upon him of the defendant's notice, and if he fails to do so, and the court is satisfied that the defendant is prejudiced thereby, the trial of the action will be adjourned in order that they shall be delivered, and the plaintiff may have to pay the costs occasioned by the adjournment. Where the plaintiff's demand exceeds £50, and he desires to abandon the excess, in order to give the County Court jurisdiction, and to sue only for the residue, he must specify the abandonment at the end of his particulars. And where the plaintiff is an assignee of a debt or other legal chose in action, he must state in his particulars the name and description of the assignor. We now give a few useful forms of particulars of claim.

(1) *For the Price of Goods Sold and Delivered.*

The plaintiff's claim is for the price of goods sold and delivered.

Particulars:—

	£	s.	d.
1907.—31st December.			
Balance of account for butcher's meat to this date .	15	10	0
1908.—1st January to 31st March.			
Butcher's meat	9	13	6
	25	3	6
1908.—7th February.—Paid	18	9	0
Balance due .	£6	14	6

Dated this 9th day of April 1910.

(Signed) —— ——, *Plaintiff.*

(2) *For Money had and Received.*

The plaintiff's claim is for money received by the defendant for the use of the plaintiff.

Particulars:—

	£	s.	d.
1910.—1st January.			
To amount of rents of No. 5 Smith Street, collected by the defendant	12	10	0
To deposit on intended sale of Eva Villa . .	25	0	0
Amount due .	£37	10	0

Dated this 17th February 1910.

(Signed) —— ——, *Plaintiff.*

(3) *Against a Principal Debtor and his Surety.*

The plaintiff's claim is against the defendant A. B. as principal, and against the defendant C. D. as surety, for the price of goods sold and delivered by the plaintiff to A. B. on the guarantee of C. D., dated the 2nd day of February 1901.

Particulars:—

	£	s.	d.
1910.—2nd February—Goods	10	3	5
3rd March—Goods	5	1	9
17th March—Goods	4	19	6
5th April—Goods	13	11	5
Amount due .	£33	16	2

Dated this 14th June 1910.

(Signed) —— ——, *Plaintiff.*

(4) *On a Promissory Note.*

The plaintiff's claim is against the defendant as maker of a promissory note for £40, dated 1st January 1909, payable four months after date.

Particulars:—

	£	s.	d.
Principal	40	0	0
Interest	1	10	0
Amount due .	£41	10	0

Dated the 1st April 1910.

(Signed) —— ——, *Plaintiff.*

(5) *For not Delivering Goods.*

1. The plaintiff has suffered damage by breach of contract for sale and delivery by the defendant to the plaintiff of 30 tons of Scotch pig-iron at £5 per ton, to be delivered at Middlesbrough on the 15th March 1910.

2. The defendant did not deliver any (*or* tons, *as the case may be*) of the said iron.

Particulars of damage:—

Loss of profit at £1 per ton on 30 tons . . . £30 0 0

The plaintiff claims £30.

Dated this 12th day of June 1910.

(Signed) —— ——, *Plaintiff.*

(6) *For Delivering Goods of Inferior Quality.*

1. The plaintiff has suffered damage by breach of contract between the plaintiff and the defendant for sale and delivery of 100 sacks of flour known as seconds, at 35s. per sack.

2. Eighty sacks delivered were inferior to seconds, and twenty sacks were not delivered.

Particulars of damage:—

	£	s.	d.
Loss of profit on the 80 sacks @ 4s.	16	0	0
„ „ on the 20 sacks @ 5s.	5	0	0
	£21	0	0

The plaintiff claims £21.

Dated this 14th April 1910.

(Signed) —— ——, *Plaintiff.*

Ordinary summons and service.—Except for the purpose of service in a district outside that of the issuing court, an ordinary summons is issued upon only the præcipe of the plaintiff, no affidavit in support being required. Where the action is for an unliquidated amount, such as damages for an

injury, or is for an account, or for recovery of land, or in respect of an equitable claim, or in fact in respect of any other claim than one for an ascertained and liquidated debt, only an ordinary summons is available—not a default summons. An ordinary summons is remarkable in five respects:—Its colour is white; it has upon it the date of the trial of the action, when the defendant must appear in court to answer the claim personally; it must, in the ordinary course, be served only by a bailiff of the court; the service need not be personal; and it is the only form of summons available against certain classes of persons. The date of the trial is that of the sitting of a court for which at the time of issue plaints are being issued; but the plaintiff has the privilege of selecting a subsequent sitting of the court. An ordinary summons is bound to be served at least ten clear days before the date fixed for the trial; service failing in this respect would be void unless it has been so served by special order of the court on the ground that the defendant is about to remove out of the district of the court in which he then resides. To obtain such an order the plaintiff would have to file an affidavit supporting the suggestion of removal, and would, moreover, be required at the trial to prove it again on oath.

Service of an ordinary summons may be effected by delivering it to the defendant personally; or to some person apparently not less than sixteen years of age, at the house or place of dwelling or place of business of the defendant; or upon a solicitor who represents to the bailiff that he is authorised to accept service, and who endorses a memorandum to that effect on the bailiff's copy of the summons; or in the case of an infant defendant, upon his father or guardian, or (if none) on the person with whom the infant resides or under whose care he is. In the case of a person of unsound mind service may be upon his committee, or (if none) on the person with whom he resides or under whose care he is. Where persons are sued as partners in the name of their firm the summons may be served upon any one or more of them, or at the principal place of the partnership business in England or Wales upon any person having or appearing to have at the time of service the control or management of the business there; but in the case of a co-partnership which has been dissolved to the knowledge of the plaintiff before the commencement of the action, the summons must be served upon every person sought to be made liable. A person who carries on business under a style other than his own name, and is sued under such style, may be served at his principal place of business in England or Wales, either personally or upon any person having or appearing to have at the time of service the control or management of the business there. A defendant living or serving on board a ship or vessel is sufficiently served if the summons is delivered to a person on board who is, at the time of the service, apparently in charge of the ship or vessel; and if he is living in a barracks, and serving as a soldier or marine, the summons may be delivered at the barracks to the adjutant of the corps, or any officer or sergeant of the company or troop to which the defendant belongs. A prisoner in gaol is served by delivery of the summons to the governor or the head officer in charge; a man working in a mine or other works underground by delivering the summons at the mine or works to the engineman, banksman, or other person apparently in charge. The gate or lodge keeper of a public asylum, gaol, or house of correction, may receive a

summons on behalf of a defendant who is an employé or inmate of either of such places. If the defendant keeps his house or place of dwelling or business closed in order to prevent the server from serving a summons, it will be sufficient service to affix the summons on the door of the house or place of dwelling or business. A summons in an action for recovery of land may, in case of vacant possession, if service cannot otherwise be effected, be posted upon the door of the dwelling-house or other conspicuous part of the property. It is sufficient to leave the summons as near as practicable to the defendant if he or any other person in concert with him should, by violence or threats, prevent the server from personally serving him with the summons. The place of business of a defendant will not for the purposes of service of a summons be considered to be truly his place of business unless he is the master or one of the masters thereof.

Leave of the Court.—In actions where the amount claimed does not exceed £5, unless the action is for the price, value, or hire of goods which, or some part of which, were sold and delivered or let on hire to the defendant to be used or dealt with in the way of his trade or calling, no other summons may be issued than an ordinary summons, except by leave of the court. Before such leave can be obtained an affidavit must be filed which includes particulars of the defendant's occupation; but leave will never be given in cases where the defendant is a domestic or menial servant, a labourer, a servant in husbandry, a journeyman, an artificer, a handicraftsman, a miner, or any person engaged in manual labour. From this it results that only ordinary summonses are available in actions against the above-named classes of people where the claim does not exceed £5.

Default summonses and service.—A default summons presents several characteristics. First, its colour is usually that known as "salmon." In the next place, it must be served upon the defendant personally. When issued there is no date appearing upon its face for the trial of the action, but instead thereof appears a notice that if the defendant wishes to contest the claim he must, *within eight days* from the service thereof, enter an appearance by sending to the registrar a form which is attached to the summons, and which must be torn off and filled up for that purpose; and a further notice that if the defendant should fail to so enter an appearance, the plaintiff may enter judgment against him for the amount claimed. Because judgment may thus go against a defendant and without special investigation by the court at the time of judgment, it is a condition precedent to issuing a default summons that the plaintiff proves his claim by swearing a sufficient affidavit. A copy of this affidavit is served with the summons, as well as a copy of the particulars of claim. The form of these latter has already been noticed. If a defendant wishes to obtain an order to pay by instalments, it is necessary for him to enter the appearance, even though he does not dispute the claim itself. The notice of appearance may be sent to the registrar of the court through the post, and by return the defendant will receive notice of the day upon which the court will sit and decide the claim if disputed, or determine the amount of instalments the defendant must pay.

Not only must default summonses be served upon the defendant personally, but they must be so served within a period of twelve months from the date of their issue; but the time of service may be extended by the court if it is

satisfied that reasonable efforts have been made by the plaintiff to serve the summons. Not only may the plaintiff himself serve a default summons, but it may at his option be served by some clerk or servant in his permanent and exclusive employ; by his solicitors, or a person in the solicitor's employ, or by a bailiff of the court. If the summons is served otherwise than by a bailiff, a copy thereof with the date of service endorsed thereon must within three clear days next after the service be delivered or transmitted to the court. After eight days has expired from the date of service, unless the defendant has given notice of appearance, the plaintiff may enter **judgment**; but before doing so he will be required to file an affidavit proving the service.

The Court furnishes forms for entering judgment and of all the necessary affidavits. These forms simplify the proceedings very much, and a plaintiff should have no difficulty in issuing a summons and obtaining judgment by default. It will be noticed that the Court is very careful, and properly so, that judgment is not obtained by default without every opportunity being given to the defendant to contest the claim. In the first place, it will not even issue the summons until the plaintiff has sworn an affidavit proving the debt; in the next place, the service thereof must be upon the defendant personally; and lastly, in case of default of appearance, the plaintiff cannot enter judgment until he has sworn an affidavit proving due service of the summons. Should the plaintiff fail to enter judgment against the defendant within two months from the date of service, the defendant not having entered an appearance, the plaintiff will lose altogether his right to judgment, and so will have to take fresh proceedings if he still wishes to enforce his claim. A default summons issued against partners in the firm's name would be sufficiently served on the firm if served personally on any one of the partners.

The trial of the action.—An ordinary summons having been duly served, the plaintiff must be careful to attend the court on the day fixed for the trial of the action; so also must the defendant if he wishes either to defend the action on its merits, or to admit the claim but obtain an order for payment by instalments. Unless the defendant has really a good defence it is not wise for him to deny his liability when attending the court, for this will mean that the plaintiff will be put to strict proof of his claim, and will be required to pay an extra shilling in the pound on the amount of the claim as a court fee for the trial. As ultimately, if the claim is proved, the defendant would himself have to pay this extra fee together with the other court fees and solicitor's costs, if any, he will be really serving his own interests in admitting the claim, and at once approaching the question of the mode of payment of the debt. The Court will hear all that the defendant has to say as to his means, and will allow the plaintiff to also give evidence thereon, and to cross-examine the defendant. After hearing what both sides have said, the Court will make such order as to payment as it thinks the position of the defendant warrants.

In the case of a default summons, where the defendant has entered an appearance, the parties should attend the court on the day for which notice has been sent to them. As the plaintiff has already been required to prove his claim by an affidavit sworn by him before the summons was issued, ne is not required to give any further evidence in support thereof unless the defendant appears and actually denies liability. In such case the plaintiff will have to prove his case in the ordinary way.

Payment by instalments.—Upon the hearing of a default summons, as in the case of an ordinary summons, the defendant may request time for payment, or that payment may be ordered by instalments, and the court will make such an order in that respect as the defendant's means makes reasonable. Here it should be impressed upon a defendant who has been served with a default summons that he should enter the appearance, if he desires time for payment of the claim, even though he does not dispute the amount of claim itself. By doing this, and by duly attending the court on the day of which he will receive notice, he will be able to obtain such indulgence in the way of payment as will meet his financial circumstances; as a consequence of not doing this, and not paying the amount claimed, he will probably receive, in the course of a few weeks, a visit from a bailiff who will proceed to levy an execution upon his goods and sell them if the debt is not paid. But where the sum for which the plaintiff has obtained judgment exceeds £20, exclusive of costs, the court has no power to make an order for payment thereof by instalments, or giving the defendant time for payment, unless with the consent of the plaintiff. The power to assist the defendant in this manner is therefore limited to sums under £20, and in such cases, unless the terms of the judgment are expressly to the contrary, a period of fourteen days from the date of the judgment is allowed the defendant wherein to pay the plaintiff's claim. Notice is always sent to the defendant informing him what order has been made. Nor need either the plaintiff or defendant wait until the day of the trial to settle a question of instalments. They may both agree to the judgment being entered either for payment forthwith or in such other manner as may be arranged.

It is generally an advantage to a plaintiff to obtain an order for payment by instalments which are within the means of the defendant. If he has a judgment to a large amount against a defendant with no goods or capital and only a moderate income, the defendant can only be crushed and is unable in any way to meet the whole sum at once; but if it is payable by instalments the defendant can pay out of his income. A plaintiff has the right at any time in respect of an unsatisfied judgment debt to apply to the court, without any notice to the defendant, and obtain an order for instalments; or if the judgment is already payable by instalments, to obtain instalments of smaller amount. One of the most effective means of forcing payment from an unwilling debtor is by committal to prison, and a court is more likely to commit in respect of one or two small instalments than of one large sum. By closely following up the instalments a creditor may be fairly certain to obtain payment ultimately.

Proceedings before trial.—The trial itself of an action is not a subject requiring very detailed treatment. The procedure at one trial is much the same as the proceedings at another; in short, the plaintiff attempts to prove his case and then the defendant tries to upset it. The whole procedure is in principle extremely simple, but in detail it depends mainly upon the rules of evidence, which are much too extensive and refined to be dealt with in this article. But a county court litigant whose cause is small and simple, and will not stand the expense of a lawyer, need have no hesitation in conducting it himself, for wherever he himself is wanting in knowledge he will invariably obtain a courteous assistance from the judge and officials; indeed, his own

solicitor will readily give him some useful hints. Reference could be made, however, to the articles on EVIDENCE.

The public who are accustomed to read the reports of law cases, and know nothing of what has preceded the trial, are apt to give too exclusive an importance to the trial itself. Lawyers on the other hand are inclined to give too great importance to those proceedings in an action which are carried on more privately than the public trial; thus the frequent saying in the profession that "cases are more frequently won in chambers than in court." The true meaning and intent of this dictum is that the proceedings in an action, preparatory and incidental to its trial, play an important and determining effect upon the result of the litigation. And this is a very correct view of the importance of such proceedings, and certainly a sufficient excuse for directing attention to those parts of the machinery of the County Court. In principle they are generally the same as proceedings with similar names in the procedure of the High Court. Thus by means of DISCOVERY (*q.v.*), a plaintiff or defendant may, by leave of the court, put written questions to the other side upon matters relevant to the issue in the action; and these questions are bound to be answered in an affidavit, thus affording the party interrogating an opportunity to find out precisely the nature of his opponent's case. And as a part of the machinery of Discovery, a party may compel the other side to file an affidavit setting out all the documents in his possession or power relating to the subject-matter of the action; and of the contents of these documents inspection must be given upon demand. Here is disclosed the nature of the written evidence of the other side. Again, a party may obtain an order for the *examination* before trial of a witness who is not likely to be able to attend the court, as *e.g.* a sailor who is bound on a voyage, or a person who is dangerously ill. And he may also obtain an order before trial for the preservation or measurement of goods, or for the sale of perishable goods, or for the taking of samples.

If the nature of the action is such that a judge of the High Court deems it desirable that it should be tried in the High Court, a party may remove it out of the County Court by *certiorari;* and if it is one outside the jurisdiction of the County Court, a similar removal may be effected by way of *prohibition.* So also a party may obtain orders for the adjournment of the day of trial, the amendment of his particulars of claim or counterclaim, or of the parties to the action; the preservation or the custody of the subject-matter of the litigation; the appointment of a receiver; the reference of the dispute to an arbitrator; and for the plaintiff to find security for the costs of the defendant. From the foregoing it will be seen that the parties need not be idle whilst waiting for trial; indeed they may so avail themselves of the above opportunities for safeguarding their respective interests, for prejudicing the position of an opponent, and for obtaining a knowledge of the evidence in the possession of the other side, as to be able to enter upon the trial of the action with a particularly complete knowledge of all the facts that can be put in evidence by each party respectively. The fight at the trial will therefore resolve itself into a struggle over the fringe of the dispute, whilst the real issue will be dealt with by each of the parties as cautiously as circumstances will permit.

Consolidation or stay of actions.—Where several actions are brought by

the same plaintiff against the same defendant in the same court, in respect of different causes of action which might have been joined in one action as already explained, the defendant may apply to the court for all these actions to be consolidated into one. In the same way when several actions in respect of one breach of contract, wrong, or other circumstances are brought against a defendant in the same court by several different plaintiffs, he may, on filing an undertaking to be bound so far as his liability in the several actions is concerned by the decision in such one of the several actions as may be selected by the judge, obtain an order to stay the proceedings in the actions other than in the one so selected, until judgment is given in the selected action. The object of such consolidation of actions and stay of proceedings is to make one trial effective for all the different actions, and to save time and often a very considerable expense. Occasion for consolidation and stay may frequently arise in the course of business. For example, a large number of employees may each have a claim against their common employer for wages, or dismissal without proper notice; and on the other hand an employer may have a claim against a number of his employees for damages for breach of their contract of service. When judgment is given in a selected action in favour of a defendant, he is entitled to his costs in respect of the stayed actions up to the time of stay; and where the judgment is in favour of the plaintiff in a selected action, the plaintiff in all the stayed actions are entitled to proceed to ascertain and recover their debts or damages and costs.

The judge may himself at any time select an action where he finds that they all depend upon some common question; but should the plaintiff in the actions stayed under such circumstances decline to be bound by the judgment in the selected action, they are entitled to obtain a date for the separate trial of their own actions. Of a similar character is the right of a party to obtain a transfer of actions commenced in different courts to the court in which the first plaintiff was entered; but of course the actions must arise out of the same circumstances.

Discontinuance, confession, and admission.—A plaintiff has always the right, at any time before trial, to discontinue his action either as against some or all of the parties thereto. To do this he must give notice in writing both to the court and to the parties to the action against whom he is discontinuing, and such parties are entitled to apply to the court for their costs. Should notice of discontinuance not be given within five clear days of the date of the trial, the parties in respect of whom the action is discontinued are entitled to their costs of preparing for the trial and attending on the day thereof for an order for their payments. A plaintiff, when discontinuing, should be careful to arrange this question of costs as soon as possible.

To save costs and needless inconvenience to the plaintiff, a defendant may at any time before trial send to the court a written notice of *confession of liability* in respect of the plaintiff's claim. But to save the costs of the trial, which are often the heaviest, the defendant should give such a notice not less than five clear days before the date of the trial; and the confession itself should be signed in the presence of a county court registrar, his clerk, or of a solicitor. But a letter written to and received by the registrar at the last moment before the trial may, if the registrar is satisfied as to its authenticity, be accepted as a confession.

Form of Admission of Claim or Part of Claim.

(*Title of Action.*) *No. of Plaint* ——.

I, A. B., the defendant, do hereby confess and admit that the sum of £ the amount claimed [*or* the sum of £ , being part of the amount claimed] by the plaintiff in this action, is due to him from me [*add if necessary:* and that I will pay the same by instalments of].

Dated this day of 19 .

Signed in the presence of C. D. (Signed) A. B.

This paper, marked A, *is the statement referred to in the annexed affidavit.*

Form of Affidavit to be annexed to the above.

I, C. D., of , gentleman, solicitor of His Majesty's Supreme Court of Judicature, make oath and say that I was present on the day of one thousand nine hundred and , and did see the above-named defendant sign the statement hereunto annexed, marked with the letter A, and that the name set to the said statement is in the handwriting of the defendant, and that the name set to the said statement as the witness attesting the same is in my handwriting.

A party to an action may by notice in writing, at any time not later than six clear days before the day appointed for trial, call on any other party to admit, for the purposes of the action only, any specific facts mentioned in the notice. In case the other party refuses or neglects to admit the facts by delivering a written signed admission thereof within three clear days before the day of trial, the costs of proving those particular facts may be imposed upon the other party without regard to the result of the action. The object of giving notice to admit facts is to save the formal proof at the trial of facts which, though essential to the case of the party who relies upon them, are yet of such a nature that their formal proof is really superfluous in view of the other party's own knowledge of them, and is moreover a matter of disproportionate expense and trouble.

Payment in and out of Court.—The defendant or the plaintiff in respect of a counterclaim may pay money into court before the day of trial; and if this is done not later than five clear days before the date thereof, he may thereby save costs. Notice of payment into court is at once given by the Court to the plaintiff. Every such payment will be taken to admit the claim or cause of action in respect of which the payment is made, unless the defendant at the time of payment into court files a notice that, notwithstanding such payment, he denies his liability. But a defendant cannot pay money into court together with a denial of liability in respect of claims or counterclaims for libel or slander. Generally the plaintiff would be entitled to take out any money paid into court, but he cannot do this when it is paid in with a denial of liability, or with a defence of tender. Except where paid in with a defence of tender, a sum sufficient to cover the appropriate costs should be included in the amount.

It is always necessary to pay money into court where the defendant relies upon a defence of tender, and if he should succeed in his defence, the

plaintiff will only be allowed to take the money out after the court has deducted therefrom any costs due to the defendant. Money is paid out to a plaintiff upon production of the plaint note. Upon the trial of the action with a jury, no communication may be made to the jury until after the verdict has been given, either of the fact that money has been paid into court or of the amount paid in. The jury will be required to find the amount of the debt or damages, as the case may be, without reference to any payment into court. In actions for damages, it is always advisable for the defendant to pay money into court to the extent of the sum he thinks a jury will probably award; by doing this he will not be required to pay the costs of the plaintiff's action should the plaintiff recover a sum not larger than that paid into court.

Counterclaims and defences.—A defendant in an action may set-off, or set up by way of counterclaim against the claims of the plaintiff, any right or claim, whether such set-off or counterclaim is sound in damages or not. Such a set-off or counterclaim will have the same effect as a cross action, so as to enable the court to pronounce a final judgment in the same action, both on the original and on the cross claim. A defendant who intends to rely upon a set-off or counterclaim must give notice thereof to the court not less than five clear days before the date fixed for the trial of the action; and together with this notice he must give particulars of his set-off or counterclaim in the same way and form as the plaintiff is required to give particulars of his claim. The court sends to the plaintiff notice of the counterclaim, together with one of the copies of the particulars as furnished to it by the defendant. The plaintiff is entitled to avail himself of the same defences against a set-off or counterclaim as a defendant may against an original claim; and in like manner he is required to conform as nearly as possible with the rules which regulate special defences.

Generally speaking, a defendant in a county court action need not disclose the nature of his defence until it arises in the ordinary course of the trial. But this position is very considerably modified by (*a*) the opportunity afforded to the plaintiff to obtain a knowledge of the defence by the various methods already alluded to; and (*b*) the necessity imposed by the County Court rules upon a defendant to give notice if he intends relying upon certain defences, which are called *special defences.* It is to these special defences that we will now direct attention; first, however, stating that the notice must be in writing, and, together with a concise statement of the grounds of the defence, sent to the court not later than five clear days before the date of the trial. The court will itself give notice to the plaintiff. The following are the special defences of which such notice should be given: (*a*) *Infancy*—in which case the defendant should state in his notice, so far as he is able, the place and date of his birth; (*b*) *marriage*—in the case of a female defendant, when she should state, so far as she can, the place and date of her marriage, together with the Christian name and surname of her husband, and his address and description so far as is known; (*c*) *the statute of limitations*—that recovery of the claim is barred through effluxion of time by statute; in which case he merely states "that the claim for which the defendant is summoned is barred by a Statute of Limitation"; (*d*) *bankruptcy*—when the notice should state the date of the certificate, discharge, or

Photo: Russell & Sons

SIR WILLIAM J. INGRAM, Bart., the chief proprietor of the *Illustrated London News* and other newspaper publications, is the son of Herbert Ingram, the founder of the *Illustrated*. He is a barrister, but does not practice. Was M.P. for Boston.

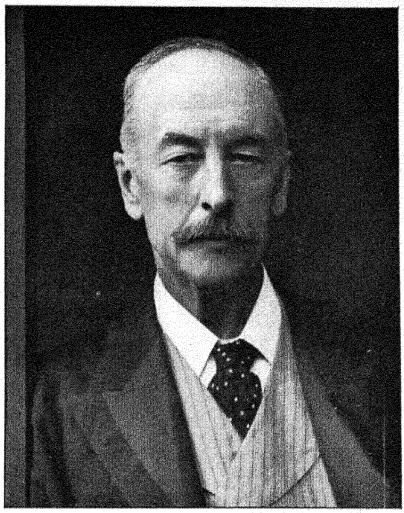

Photo: Reginald Haines

ARTHUR CHAMBERLAIN, one of the most influential business men in Birmingham. He is the brother of the Right Hon. Joseph Chamberlain, but has taken no active part in politics, beyond making many outspoken criticisms of political affairs, from the business man's point of view. Is Chairman of the great firm of Kynoch's.

Photo: Chancellor

VISCOUNT IVEAGH (EDWARD CECIL GUINNESS), born 1847, is head of the firm of Guinness & Sons, the famous brewers. He is a D.L. of Dublin City, High Sheriff of Dublin 1876, and Hon. Col. of the Dublin City Artillery. Created a Baronet in 1885, Sir E. C. Guinness became Lord Iveagh seven years later, and a Viscount 1905.

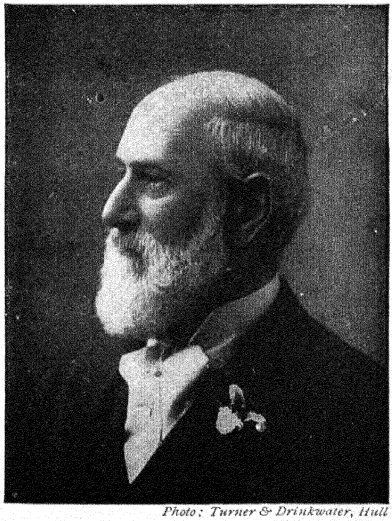

Photo: Turner & Drinkwater, Hull

SIR JAMES RECKITT, Bart., head of the mercantile firm of Reckitt & Sons, of Hull, was born in 1833. Is also Chairman of the Eastern Morning and Hull Newspaper Co., and is well known for his deep interest in educational and philanthropic work, and for his splendid gifts of free library, convalescent home, orphan home, &c., to the town of Hull.

SUCCESSFUL BUSINESS MEN

final order, and the court by which such certificate, discharge, or final order was granted or made; (*e*) *libel or slander*—where in such an action the defendant does not rely as a defence upon the fact that the libel or slander is true, but relies in mitigation of damages on the circumstances under which the libel or slander was published, or the character of the plaintiff, he must with his notice give a statement with particulars of the matters relating thereto as to which he intends to give evidence; (*f*) *statutory defence*—if the defendant relies upon any statutory defence, or any defence of which by statute he is required to give notice, he must in his statement set forth the year, chapter, and section of the statute, and the short title thereof, and upon the particular matter upon which he relies; (*g*) *equitable relief*—where he claims any equitable estate or right, or to relief upon any equitable ground against the plaintiff's claim or any part thereof, he must show concisely the circumstances which give rise to the defence, and set forth separately each of the grounds of equitable relief; (*h*) *tender*—should the defence be one of tender, the defendant at the time of filing notice of such defence must make payment into court (which should be without costs) of the amount alleged to have been tendered.

Contribution and indemnity.—It often happens that a person subject to a liability has a right to obtain a contribution to, or an indemnity against, his liability from some third person. Thus a man who is one of two or more sureties for the debt of another, would, if he paid the debt, be entitled to sue each of his co-sureties for a proportionate share of, or contribution to, the liability. Or again, he may have been absolutely indemnified by some third party against any liability whatever in respect of a certain claim, the consequence of which would be that he could sue the person indemnifying him in the event of his having been required to pay and satisfy the claim. Such a case as the latter would arise where a lessee, having assigned his lease to another person who agreed to pay the rent as it became due, and indemnified him against such payment, had been bound to pay some rent to the landlord in consequence of the assignee's default. In order to save separate actions, the practice of the county court provides means by which persons from whom contribution or indemnity is claimed may be brought into actions already pending.

Where therefore a defendant claims to be entitled to contribution or indemnity over against any person not a party to the action, he may, five clear days before the date fixed for the trial, file a notice of his claim with the registrar of the court. This notice, together with a copy of the summons in the action and a copy of the particulars of claim, will be served upon the third party in the same manner as a default summons would be served. In the same way a defendant may proceed for contribution or indemnity against a co-defendant in the action. Should the person served with this notice make default in appearance, he will be taken to admit the validity of any judgment which the court may give against the defendant, and also to admit his own liability to contribute or indemnify, as the case may be. The net result would be that the "third party" would be ultimately placed in the same position of judgment debtor to the defendant as the defendant himself is to the plaintiff—subject of course to any difference in extent there may be between the amount of the original claim in the action and the amount of

the contribution or indemnity. By adopting this procedure the defendant, as we have already pointed out, saves a separate action and obtains a trial of his case as against the third party, on much the same facts and at the same time as the trial of the original action.

Jury and assessors.—Either party to an action has in certain cases an absolute right to trial by jury. These cases are: interpleader matters and actions of replevin, or for the recovery of land or tenements, or to enforce any right relating to lands, or for the recovery of any damages in respect of any such right. But by an order of the Court for trial by jury, any other action or matter or any question of fact arising therein may be so tried. The usual number of a jury at a trial in a county court is eight. The party desiring the jury must give notice of the demand therefor in writing to the registrar five clear days before the day of trial; a fee of eight shillings must be paid at the same time. Where notice of demand for a jury has not been given in due time, or if at the trial both parties desire to try by a jury and no jury be then in court, the judge may, on such terms as he shall think fit, adjourn the trial in order that notice for a jury may be given. If the judge thinks fit, on application of either party, he may summon an assessor or assessors to assist in the trial of the action. Assessors are persons of skill and experience in the matter to which the action or matter relates, and a list of local assessors is exhibited in the county court office. Any party who requires an assessor is required, at the time of application therefor, to pay to the registrar two guineas if the amount claimed in the action does not exceed £20, and four guineas if it should exceed that amount. Such payments, as well as those for a jury, are costs in the action, unless the judge otherwise orders.

Evidence and documents.—It is most important that a litigant should review his case some days before the trial. His solicitor would do this in the course of preparing the case for trial, and having taken advantage of those of the intermediate proceedings referred to above which were appropriate to the particular case, would now consider in particular the evidence to be submitted to the court in support of his own client's case and of the case of the other side. The evidence would be of two kinds—oral and documentary. Oral evidence is the verbal testimony given in the court by the witnesses. A full note, or "proof" as it is called, is taken of each witness's evidence some time before the trial, and each witness should sign it so that he may be confronted with it in court if he should then tell a different tale. All witnesses should be summoned to the trial by a subpœna. *A subpœna* may be obtained upon application at the court office, and should be served upon the witness in the manner directed for service of an ordinary summons. There is no restriction as to the time which should elapse between the service of the subpœna and the day of the trial, it being sufficient if the witness is served within a reasonable time. Where the witness has documents in his possession, a subpœna may be obtained which will require him to produce the specified documents to the Court; and such a subpœna, which is called a *subpœna duces tecum*, may be issued even if documents alone are required to be produced by, and no oral evidence is desired from, the witnesses served. Should a witness fail to obey a subpœna he may be summarily dealt with by the Court.

When *documents* are to be given in evidence, the party who desires to tender them should be careful to see that they are properly stamped when they are of a nature requiring a stamp. If they are unstamped, or insufficiently stamped, they can only be received in evidence after the party tendering them has paid to the registrar of the court the amount of the unpaid duty, and of the penalty for not stamping, and of the additional sum of one pound. This means that if an agreement is unstamped which should bear a sixpenny stamp, the party producing it at a trial would have to first pay £11, 0s. 6d.—being sixpence for the stamp, £10 for the penalty, and £1 fee to the court. The greater part of the £10 penalty would be afterwards probably remitted by the Inland Revenue authorities upon an application giving some reasonable excuse for the document not having been stamped.

Where a party relies, in respect of his own case, upon some document in the possession of the other side, he must give notice for it to be produced at the trial. Such notice having been given, and the other side having failed to produce the document at the trial, the party who gave the notice will be entitled to give in evidence a copy of the document, or give oral evidence of its contents. Had the notice—usually called a "notice to produce"—not been given he would, in the absence of production by the other side, have been precluded from relying upon his own evidence of the document and giving it in evidence as part of his case. The importance of this notice may be remarked in the trial of almost every cause. A plaintiff, for example, relies upon a letter he has written to the defendant as a most material element in the proof of his claim, and he accordingly wishes to produce it to the court in the course of his evidence. The defendant, however, may have lost the letter. If such is the case, or if the defendant does not produce it, the plaintiff, having given notice to produce it, will be entitled to tender the press copy of the letter or any other kind of copy he may have made, or in default of copies he may give a verbal account of the contents of the letter. In connection with this may be mentioned the "notice to inspect and admit," which should be given to the other side. Where a party desires to give in evidence any document, he may, not less than five clear days before the trial, give notice to any other party in the action who is competent to make admissions, requiring him to inspect and admit such document. If the other party does not, within three days after receiving the notice, make the required admission, any expense of proving the same at the trial must be paid by him, whatever may be the result, unless the court otherwise directs.

Generally.—We return again to the trial of the action merely to remind the reader that its intended end is a judgment, in ordinary cases either for the plaintiff or for the defendant. For more particular information on the whole subject, reference should be made to the articles on JUDGMENT; ATTACHMENT; EXECUTION; DEBTORS ACT; APPEAL; EJECTMENT; REPLEVIN.

COURSE OF EXCHANGE.—On every Tuesday and Thursday the leading bill-brokers and representatives of the banks meet in London, at the Royal Exchange, for the purpose of settling the prices at which exchange transactions shall be done in London on that and the succeeding day or two.

These prices are the *rates of exchange* at which bills are being negotiated, and include the ruling rates between London and most foreign commercial centres. Lists are made of these current rates of exchange—or, in other words, current prices for the sale and purchase of bills of exchange—and are subsequently published in the money columns of the newspapers. When so drawn up and published, such a list is called a "Course of Exchange." In the same column, and under the same general heading, are also published the rates ruling on the principal foreign exchanges in respect of bills payable in London. From the Course of Exchange a reader can accordingly gather the cost of a remittance by bill from London to a specified foreign country, and also the cost of a similar remittance from a foreign country to London. The following is the Course of Exchange as it appeared in a recent issue of the *Economist*.

London Course of Exchange.

On.	Usance.	Price Negotiated on 'Change.	
		Feb. 15.	Feb. 17.
Paris	Cheques	25 17½ 25 20	25 17½ 25 20
Do.	3 months	25 36¼ 25 41¼	25 35 25 40
Marseilles	Do.	25 36¼ 25 41¼	25 36¼ 25 41¼
Amsterdam	Cheques	12 2⅝ 12 2⅞	12 2⅝ 12 2⅞
Do.	3 months	12 4¼ 12 4⅜	12 4¼ 12 4⅜
Berlin	„	20 63 20 67	20 63 20 67
Hamburg	„	20 63 20 67	20 63 20 67
Frankfort	„	20 63 20 67	20 63 20 67
Vienna and Trieste	„	24 30 24 34	24 29 24 33
Antwerp	„	25 46¼ 25 51¼	25 46¼ 25 51¼
St. Petersburg	„	25 25⅛	25 25⅛
Moscow	„	25 25⅛	25 25⅛
Genoa, Naples, &c.	„	25 56¼ 25 61¼	25 55 24 60
Madrid, Barcelona, &c.	„	43¾ 44	43 13/16 44 1/16
Lisbon	„	47 5/16 47 9/16	47 5/16 47 9/16
Switzerland	„	25 42½ 25 47½	25 42½ 25 47½

The discount quotations current in the chief continental cities are as follows:—

	Bank Rate.		Open Market.
	%		%
Paris	3	Jan. 23, '08]	2½
Berlin	4	Feb. 10, '10]	3
Hamburg	4	Feb. 10, '10]	3
Frankfort	4	Feb. 10, '10]	3
Amsterdam	3	Oct. 13, '09]	2
Brussels	3½	Oct. 9, '09]	2⅝
Vienna	4	May 7, '08]	3
Rome	5	Jan. 27, '08]	3½
Turin	5	Jan. 27, '08]	2½

	Bank Rate.		Open Market.
	%		%
Genoa	5	Jan. 27, '08]	3½
Geneva	3½	Jan. 5, '10]	3
St. Petersburg	5	July 9, '08]	nom.
Madrid	4½	Sept. 24, '03]	3½
Lisbon	6	Jan. 9, '08]	5
Stockholm	4½	Jan. 24, '10]	4½
Christiania	4½	Feb. 3, '09]	4½
Copenhagen	5	Oct. 13, '09]	5

At other centres the latest recorded quotations are:—

	%		%
New York (call money)	2½	Calcutta, Bank min.	6
Do. (endorsed Bills)	4½-5	Bombay, Bank min.	6

Foreign Rates of Exchange on London.

	Latest Dates.	Rates of Exchange.	Usance.		Latest Dates.	Rates of Exchange.	Usance.
Paris . . .	Feb. 18	25·17½	Cheques	Lisbon . . .	Feb. 17	48d.	At sight
Brussels . .	— 17	25·28½	,,	Madrid . . .	— 18	26·90	,,
Amsterdam .	— 17	12·13⅞	Short	Italy	— 17	25·34	,,
Berlin. . .	— 18	20·45	,,	Rio Janeiro. .	— 17	15 5/32d.	90 dys st
Do. . . .	— 18	20·33	3 months	Buenos Ayres .	— 14	48 7/16d.	90 dys st
Hamburg .	— 17	20·45½	Short	Montevideo . .	Jan. 21	52⅛d.	90 dys st
Frankfort .	— 18	20·42	,,	Calcutta . . .	Feb. 18	1/4 1/16	telegraph
Vienna . .	— 18	24·05	,,	Bombay . . .	— 18	1/4 1/16	transfer
St.Petersburg	— 17	93·70	3 months	Hong-Kong . .	— 18	1/9⅛	,,
New York .	— 18	4·84¼	60 days	Shanghai . .	— 18	2/4 7/16	,,

Other Exchanges.

SOUTH AFRICA.

London on South Africa.		*South Africa on London.*	
Sight	⅝ % dis.	Sight	½ % dis.
30 days	1⅛ ,,	30 days	1/16 ,,
60 ,, ...	1¾ ,,	60 ,, ...	1 3/16 ,,
90 ,, ...	1½ ,,	90 ,, ...	1⅝ ,,
120 ,, ...	3⅜ ,,		

AUSTRALIA.

London on Australia.			*Australia on London.*		
Buying.		Selling.	Buying.		Selling.
...	Cable.	Par.	...	Cable.	100⅞
98¼	On Demand . . .	Par.	99½	On Demand . . .	100⅜
97 3/4	30 d/s	...	99⅜	30 d/s	100
97¼	60 d/s	...	98¾	60 d/s	99⅛

In the present article it will not be necessary to go further into the subject of FOREIGN EXCHANGE than to merely explain the meaning of the above tables. As we have already said, the term Course of Exchange is little else than a synonym for the expression "Rates of Exchange," except that it imports the addition of the word "current" to that expression. The Course of Exchange may therefore be taken as signifying a list of the Current Rates of Exchange.

The first point to remark is that, the above list being published weekly, it includes in its first division each of the rates settled during the week—Tuesday's on the 15th December, Thursday's on the 17th. In the first column of that division are set out the cities at which the bills are payable; and in the second column is set out their "usance" or the time at which they are payable—generally at three months. In the third column are set out the prices at which these bills are being sold—these prices being the current rates of exchange. Except when dealing with exchange upon Russia, Spain, Portugal, South America, India, and oriental countries generally, the custom is to quote these rates on the basis of English money. But with regard to the countries just enumerated it is their money which is taken as a basis for the quotation of rates. Thus, taking the first column of the rates for cheques on Paris, the quotation 25·17½ is to be taken as meaning that £1 in London is worth 25 francs and 17½ centimes in Paris. But take the first column of the rates for three months' bills on Lisbon, and we

find that 1 milreis in Lisbon is worth 38⅞ pence in London. Where the quotation is in decimals, it means that the English £1 sterling is the unit of the exchange, and that the decimal quantity is its equivalent in the foreign country; but where the quotation is in any other form, it means that its figures represent an equivalent in English pence of the appropriate foreign country's unitary coin.

The next division of the list calls for little comment. It is an enumeration of the chief continental and other cities, and sets out the bank rate ruling in each of them with the date when it was fixed, and also the rate for the discount of bills which rules in the open money market of each city respectively.

In the third division appear the rates of exchange obtained in certain foreign countries and cities for bills of exchange on London. Here the dates are given upon which these rates ruled, and the rates themselves are quoted upon the same principle with regard to a monetary basis as those of the list in the first division. It is only in a few details, as in technical expressions, that this list has any distinguishing features. *Short* means that the bills quoted are cheques or bills either payable on demand or not later than at three days' sight. It is obvious that a cheque or a short bill should be cheaper than a *long* bill or one payable at the expiration of a "term." For one thing, the parties liable upon the bill do not receive so long a credit, and for another, the interest to be accounted for is not so great. *Teℓg'ph tr'ns'fr*, or, as it is usually abbreviated, T.T., means that money is being transferred at once by telegraph. *See* ARBITRAGE; BANK RATE.

COVER in the usual sense means a security against loss, and is especially applied to the security given in speculative dealings in stocks and shares. The cover system, popularly so-called, is not usually adopted by brokers who are members of the Stock Exchange; it is really the speciality of the "outside" broker. It means that such a broker will open an account with a speculator, and upon receipt of a deposit of say £5, he will buy or sell as the case may be, say £500 of, *e.g.*, a certain railway stock. If he buys for the speculator and the price of the stock goes down £1, the £5 cover is lost to its depositor—it has "run off," the broker would say; and, on the other hand, if the broker sells the same stock and the price rises £1, then also would the cover run off. Of course the attractive theory of the cover system is that the speculator can command the sale or purchase of say £500 stock with a capital of only £5; and that if he is a buying speculator with a view to sale—a "bull"—and the price rises, or a seller with a view to purchase, or "bear," and the price falls, he will obtain as much profit as if he had actually invested the whole £500. But in practice the theory rather fails, and the speculator in differences is generally a loser. Most frequently the outside broker does not in fact buy or sell the stock at all, but is in effect a principal speculator with his client. Such speculation is pure gambling, the whole transaction depending upon the possibilities of the movements in price of the selected stock; but if both the speculator and the broker promptly at the stipulated times pay to each other the *bonâ fide* differences, neither has reason to find fault with the other. It is otherwise where the broker takes the cover, allows it to run off if possible, but if the differences are against him makes default in payment to his client. Of course an outside broker may *bonâ fide* buy and sell according to his instructions. Should

he do this, and any differences beyond the cover become due to him from the client, he may sue for and recover them if there is no agreement limiting the client's rights and obligations; and, under like *bonâ fide* circumstances, if the differences were the other way the client could sue the broker.

In dealing with a broker who is a member of the Stock Exchange, the client has a right to see the entries of the bargains (purchases and sales) made on his behalf. By the exercise of this right he may always safeguard himself against imposition. Such a broker does not, however, as we have already mentioned, deal on the cover system. Whatever he receives from his principal in the nature and under the name of cover, is in fact a *bonâ fide* security against a possible *bonâ fide* loss. If he is satisfied with his principal's financial stability he may not require any security, but very generally the principal would be expected to deposit shares together with a blank transfer thereof. It is often the case that the broker uses this deposit and blank transfer as a security on his own account for advances from his banker, therewith to finance the transaction and sometimes to finance his business generally. *See* CARRYING OVER; STOCKBROKER; BLANK TRANSFER.

CRABS AND LOBSTERS.—Edible crabs, except for use as bait, and lobsters, may not be taken, possessed, sold, exposed, consigned, or bought for sale which have recently cast their shell; or are carrying spawn, or in the case of crabs are of a less width across the broadest part of the back than 4¼ inches, or in the case of lobsters are not 8 inches long. The penalties are £2 for a first offence, and £10 for each subsequent offence, and the crabs or lobsters may be seized.

CREMATION is not illegal if conducted in such a way as not to contravene the provisions of the Cremation Act, 1902. If a deceased had expressly desired cremation, the courts would interfere to prevent the burial of his body without cremation; but after burial the court would probably decline to interfere. There is no objection to the burial in consecrated ground of cremated remains, but the ecclesiastical authorities would decline to allow a body to be disinterred with a view to cremation. A burial authority may provide for cremation; but crematoria may not be constructed within 200 yards of a dwelling-house, except by consent, nor within 50 yards of a public highway, nor in the consecrated part of the burial ground of a burial authority.

CRIMINAL APPEAL. *See* APPENDIX.

CRISIS.—In a commercial community as in this country, where business is largely dependent on a system of credit, actual cash is economised, and the amount of debts payable on demand is very large, any extraordinary and sudden demand for cash leads to a panic and a commercial crisis. The prime cause of such a demand is a previous destruction of wealth or an arrest in its production. Thus a bad harvest, a failure in the production of some staple commodity, or an extensive strike or lockout, may each primarily tend towards a crisis. And when as a result of either of those, together with other like causes, there occurs an extraordinary limitation of credit and a sudden fall in prices, there then exists some of the most essential elements of a panic. From this it will be seen that prior to the crisis there is a state of extensive production of wealth, general employment of labour, diffusion of credit, and high prices. The cause and the sole reason for the existence of the crisis being a want of cash, it naturally follows that the banks are its objective. But by the necessary conditions of things, the banks are not in a

position to readily meet this extraordinary demand. Their deposit customers are usually the first to fall in with the spirit of the time, and they at once withdraw their deposits. These and other resources of the banks which had been increasing so rapidly during the previous good times had almost as rapidly been advanced by the banks to speculative customers—sunk in docks, railways, and other ventures which are realisable and productive only after many years.

The result is a mutual distrust in the commercial world, a disinclination to extend credit, an attempt at a general reduction into possession of all outstanding assets, and finally a general run on the banks. The banks that have been too speculative in past periods of plenty first feel the shock; and after them it extends throughout the banking world generally, always affecting most adversely those banks whose assets are least capable of speedy realisation. At the back of all stands the Bank of England. Fortunately some of the incidents of a crisis which affect the other banks most disastrously have a beneficial effect upon the Bank of England. For example the deposits which have been withdrawn from the other banks generally find their way into the Bank of England. But in any case, the cash reserve now usually held by the Bank of England is so great as to be practically an unfailing resource at a time of crisis. To prevent those who do not really require cash from drawing unduly upon those resources, the Bank of England from time to time increases the bank rate, so as in effect to prohibit it to those whose need is not pressing. Should this policy be inadequate to allay the panic, there is always available a suspension of the Bank Act, the effect of which would be to allow the bank to issue notes in excess of its proper reserve of bullion. The adoption of such a policy would not in view of past experience cause any unreasonable issue of notes, but would find its beneficial operation mainly in restoring public confidence.

In view of probable crises, business should always be conducted with prudence and caution if it is to profitably progress. A business man should always have available a certain reserve of easily realisable assets with which to meet any possible contingency. He should always remember the difference between marketable and unmarketable securities. Consols may be sold or borrowed upon at a moment's notice, even in times of commercial crisis; so may some Stock Exchange securities and also commercial commodities such as produce. On the other hand land and houses, mortgages thereof, book debts, and speculative stocks and shares would then be found useless.

That a crisis—that more than one or two even—will occur in the commercial world during the course of a business career may be taken as certain. Indeed the periods for their occurrence may be fairly reasonably ascertained; for trade seems to fluctuate in terms of ten years, the first five showing a gradual decrease in prosperity and the latter five an increase. The first notable crisis within a little more than a century past was in 1793—one which was caused by the heavy drafts on our capital on account of the war with France then progressing. In 1799 there was a panic, and again in 1814 when 240 British banks stopped payment. In and about the years 1825–26 about 770 banks failed, and Yorkshiremen had to live on bran. Further crises occurred in 1831, 1837, and 1847. In the latter year disastrous railway speculation led to a loss of over twenty millions, and the bank rate rose to 13 per cent. 1857, 1866, 1873, 1885, and 1892 were also years of crises; about the time of the latter year Messrs. Baring Brothers failing, and

also many financial houses and building societies; in Australia nearly every bank stopped payment.

CROPS may be distrained and sold for rent and also taken in execution and sold under a judgment for debt. If they are assigned separately from the land the assignment must be by bill of sale; and the sale of crops is governed by the same law as the sale of goods generally. To unlawfully and maliciously set fire to hay, grass, corn, or other crop, whether standing or cut down, is to commit a felony. *See* AGRICULTURAL HOLDINGS.

CUSTOM and USAGE.—A custom, as understood in law, is a usage which has obtained the force of law, and is in truth a binding law for the particular place, persons, and things concerned. It must be "a reasonable act, iterated, multiplied, and continued by the people from the time whereof memory serves not." A custom must be confined to a particular place—if it were general throughout the country it would be law, not a custom. It must be ancient, reasonable, certain, and have been continually and peaceably enjoyed. A custom would be void which is unreasonable and uncertain and savours too much of arbitrary power, such as would tend to make a lord of a manor judge of his own cause. But it would be no objection to a custom that it is not conformable to the common law of the land. It cannot vary or alter the construction of written documents unless, in addition to being certain and invariable, the custom is one which all the parties thereto could know.

A usage, or custom of trade or of merchants, is not subject to the same rules as a custom properly so-called. Though it must be reasonable, and must not be repugnant to the terms of the contract nor to the law, it need not be ancient, nor need it be known to the party to be bound by the contract. The custom or usage of merchants is the foundation and a continually essential element of the commercial law, and as such is part of the general established law of the land; so far as adjudged cases are pertinent to it, it must be controlled by them. It is only reasonable and necessary that a usage need not be ancient, for the usages of trade are always changing and developing; and again, it is only reasonable that proof should not be required of its being known to the party bound, for he must be taken to have known of the particular usage if he deals in the market where it prevails, or authorises his agent to deal therein, as in the case referred to in the article on AGENCY. If there is a general usage applicable to a particular trade or profession, those who employ any one engaged in such a trade or profession are taken to have dealt with him according to that usage; but a usage for a veterinary surgeon to charge for his attendance, when there has not been much medicine required, has been held to be too uncertain a usage to come within this rule. The usage of trade is a general and prevailing course of business in connection with the particular trade or market, and it is not proved by merely the general opinion of merchants—only by special instances of the manner in which business is carried on. Where, therefore, any one is called as a witness to prove a particular usage of trade, he should cause his mind to revolve over instances known to him of its having been acted on.

As we have already said, a usage must not be repugnant to the terms of the contract; in other words, it cannot be set up in contravention of an express agreement. Consistently with this rule, in an action on a warranty of prime singed bacon, the judge refused to admit evidence to show a practice in the *bacon trade* to receive bacon as prime singed bacon which was

to a certain degree tainted; nor to show a practice to preclude the purchaser from all remedy, if he does not discover and point out the defect by an early day. In the *corn trade* it has been held to be a reasonable custom of the Liverpool corn market, that when corn is sold by sample, if the buyer does not on the day the corn is sold examine the bulk and reject it, he cannot afterwards reject or refuse to pay the whole price. In the *printing trade* it has been found to be a custom of the trade that a printer is not entitled to recover for printing a work until the whole is completed and delivered; but there is no general custom of trade by which printers are bound to insure for the publishers the paper of the works which they print. *Iron trade.*—By the usage of this trade, warrants for goods deliverable f.o.b. to A. B. or his assigns by indorsement, are considered to pass the goods free from a vendor's lien to *bonâ fide* holders for value. And *see* also HIRE-PURCHASE SYSTEM; ORDER AND DISPOSITION; FACTOR.

CUSTOMS.—The source of the revenues of the Crown may be divided into nine great branches, the first of which is the customs, and the second the excise. The following are the seven other branches set out in their usual order:—Stamps, land-tax and house duty, property and income tax, post-office, telegraph service, crown lands, and miscellaneous. The customs with which this article proposes to deal are the duties or toll paid by the merchant at the quay upon imported as well as exported commodities, and imposed by authority of Parliament. The EXCISE (*q.v.*), on the other hand, is a taxation directly opposite in its nature to that imposed under the name of customs, being generally levied upon articles of consumption produced and dealt with at home.

From the reference to the customs in Magna Charta, it would seem that the name "customs" was really indicative of the origin of this form of taxation in a common law or customary right of the king to levy taxes upon goods in the course of carriage in and out of the kingdom. But this common law right to levy customs, if it existed at all, was undoubtedly limited to impositions in respect of the exportation of wool, skins, and leather—three commodities which were styled the *staple* commodities of the kingdom, because they were obliged to be brought to those ports where the king's staple, or market, was established, in order to be there first assessed before exportation. With the development of home manufactures, and as a consequence of the statutory prohibition of the exportation of wool in the reign of Edward III., exportation of these commodities ceased, and the taxes levied thereon became of little value. Another ancient hereditary duty belonging to the Crown was the prisage or butlerage of wines—a right to levy a certain import upon wines imported into the kingdom. Other customs anciently payable were subsidies—impositions by Parliament upon any of the above-mentioned staple commodities over and above the customary duty; tonnage—a duty upon all wines imported, over and above the prisage and butlerage aforesaid; poundage—a duty imposed *ad valorem* on all other merchandise whatsoever, and various other imports levied by Parliament as occasion required.

The imprudent and unconstitutional levying of these imports was often a fruitful source of public discontent and even of rebellion; and it was from the hands of the king who tried his subjects most severely in this respect—Charles I.—that the kingdom received a renunciation by the Crown of all its

THE REVENUE AND EXPENDITURE OF NATIONS

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THE national revenue and expenditure of various countries, as stated in the most recent British official Blue-Book published up to April 1910, is as follows :—

Country.	Revenue.	Expenditure.
	Millions sterling.	Millions sterling.
Russia	267	273
United States	165	177
France	159	155
United Kingdom	152	152
Austria-Hungary	148	148
Germany	137	137
Italy	93	90
Belgium	27	31
Sweden	12	12
Norway	6	6
Denmark	5	5
Total	1171	1186

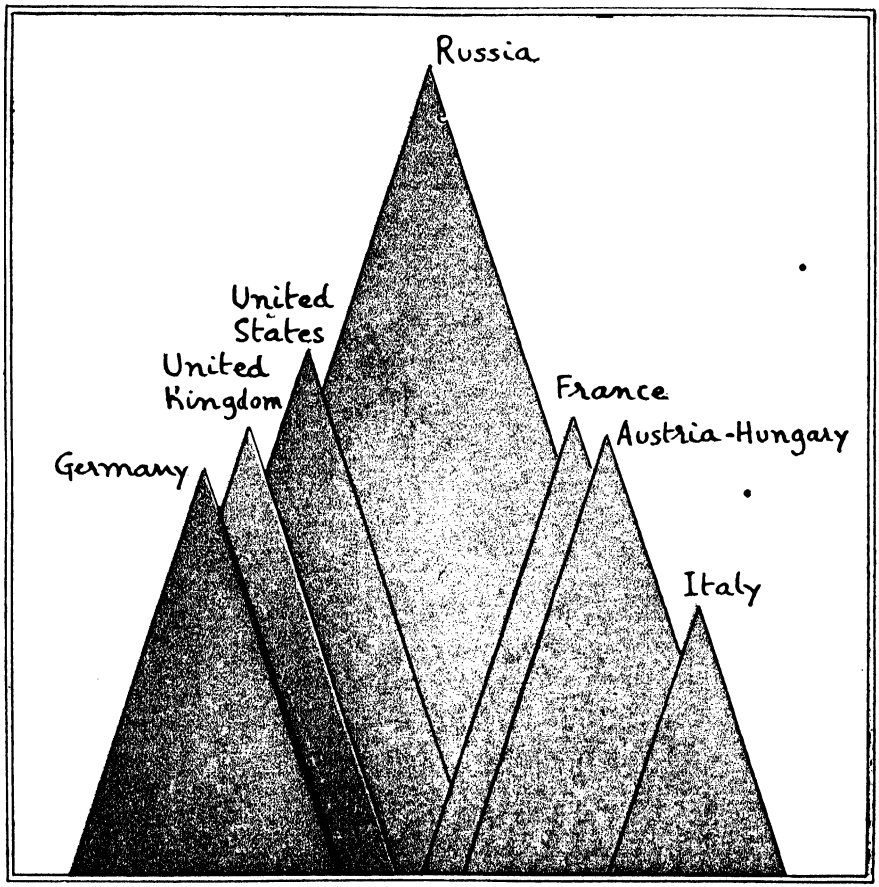
In this Table the results for the United Kingdom relate to the year ended 31st March 1909.

These facts are not strictly comparable among themselves, for the reason that the items included by national revenue and expenditure are not identical in every country. However, the facts do give a broad view of each nation's national income and expenditure.

We notice that six of the seven Great Powers which head the list have each exceeded the 100 millions of revenue and of expenditure in one year; Italy is the only great power that falls short of this.

Taking the seven Great Powers as one whole, their combined revenue and expenditure is as follows :—

	Revenue.	Expenditure.	Revenue.	Expenditure.
	Millions sterling.	Millions sterling.	Per cent.	Per cent.
The Seven Great Powers	1121	1132	96	95
The Four other Nations	50	54	4	5
Total	1171	1186	100	100



The National Expenditure of the Seven Great Powers. The height of each peak represents the amount stated in the above Table.

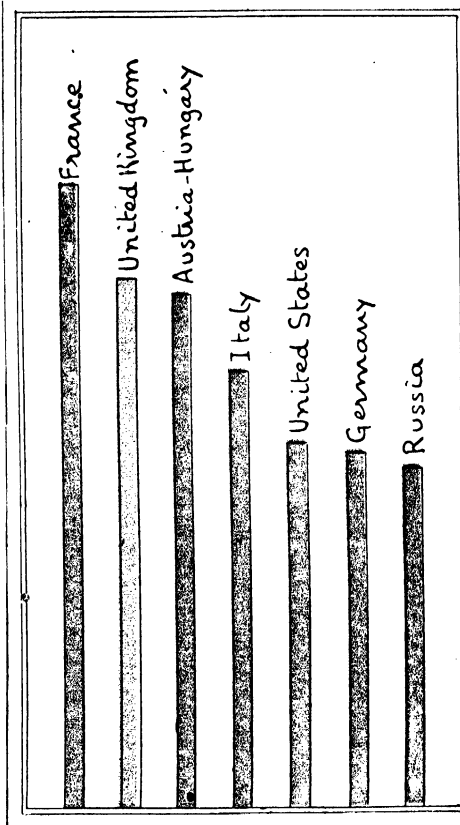
Thus, the seven Great Powers (Russia to Italy) take 96 per cent. of the total revenue of 1171 millions, and spend 95 per cent. of the total expenditure of 1186 millions. A cogent, if elementary, reason why they are Great Powers.

The huge expenditure of 1186 millions, in one year, made by these eleven nations is nearly equal to the whole capitalised wealth of Canada or of Australasia, including all lands, farms, houses, railways, factories, &c., &c. And it is equal to nearly one-tenth part of the whole capitalised wealth of the United Kingdom. This expenditure means that over 3 millions per day are spent by these eleven countries.

Concerning the yearly national expenditure per head of population in each country, the facts are as follow :—

YEARLY NATIONAL EXPENDITURE PER HEAD OF POPULATION.

Country.	Expenditure per Head of Population.
	Shillings.
Belgium	92
France	79
United Kingdom	67
Austria-Hungary	65
Norway	55
Italy	55
Sweden	47
United States	46
Germany	45
Russia	43
Denmark	38
All the 11 Countries	53



The National Expenditure of the Seven Great Powers, per Head of Population.

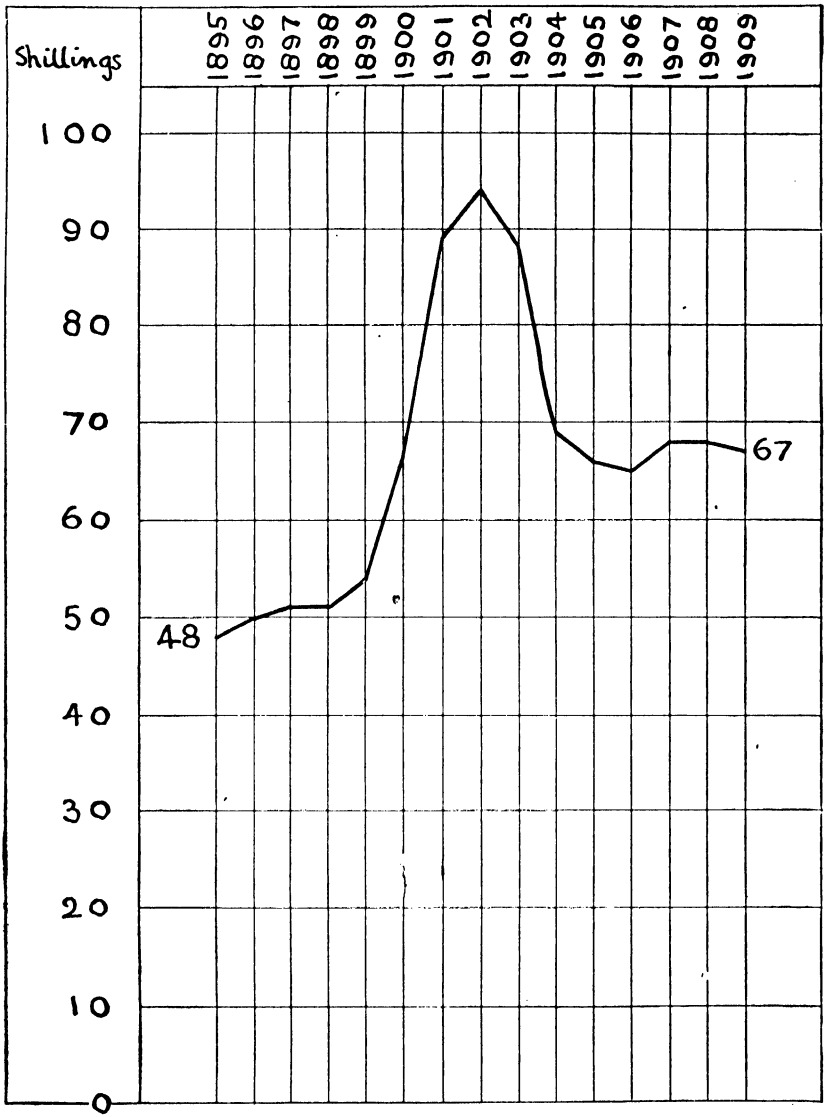
The average national expenditure per head of population by all the eleven countries is 53 shillings per year. Of those nations which exceed this average expenditure, Belgium is at the top of the list with an expenditure of 92 shillings per head of population : this is twice as much per head as the expenditure of the United States, and it is more than twice as much as Russia's expenditure per head of population. The United Kingdom comes third on the list.

Of the seven Great Powers, namely, the United Kingdom, France, Austria-Hungary, Italy, Germany, Russia, and the United States, we observe that the last three of these are below the average expenditure of 53 shillings per head of population. Quite apart from this result, there is no doubt but that the Germans, at any rate, do manage their national affairs more cheaply than we do. Their army, notably, is worked much less expensively than ours is, regard being paid to the relative sizes of the two armies.

The growth of the national expenditure of the United Kingdom, per 100 of population and per head, is shown by the following statement :—

EXPENDITURE, UNITED KINGDOM, 1895–1909.

Year ended March 31st.	Expenditure per 100 of Population.	Expenditure per Head of Population.
	£	Shillings.
1895	242	48
1896	249	50
1897	256	51
1898	257	51
1899	268	54
1900	328	66
1901	446	89
1902	471	94
1903	440	88
1904	347	69
1905	332	66
1906	325	65
1907	339	68
1908	342	68
1909	335	67



The Growth of the National Expenditure of the United Kingdom, 1895–1909. Number of Shillings per Head of Population.

The national expenditure of the United Kingdom per head of population is now much more than it was in 1895, despite the well-marked fall since the years of the war, when the maximum of 94 shillings per head of population was reached. Since 1902 there has been a fall to 65 shillings in 1906, followed by a rise in later years. With the increasing need for adequate military and naval protection of the British Empire—the cost of which falls almost wholly upon the United Kingdom—it is not likely that we shall ever get back to 50 shillings per head of annual national expenditure.

J. HOLT SCHOOLING.

powers of levying tonnage and poundage without the express consent of Parliament, and also of its power of imposition upon any merchandise whatever. To Charles II. upon his restoration the country restored these powers, but from the time of Queen Anne they have been mortgaged to the public by the Crown in return for the public adoption of certain of the Crown's obligations. Hence the modern exclusive authority of Parliament in the matter of the customs and taxation generally.

Until 1787 the various customs duties were collected on the basis of a book of rates, signed from time to time upon its different republications by the speaker of the House of Commons. Under this system the whole tariff of duties was in a most chaotic and uncertain condition—only a very few experts having any sort of certain knowledge of the amount of the duties properly to be imposed in respect of different commodities. Besides this, there was an equally embarrassing multiplicity of means by which the amounts of the duties were ascertained. Some commodities were taxed according to bulk, others according to their value, and others according to further different standards. And to increase the difficulties of the situation, when new or additional duties were imposed by the Legislature reference was rarely made, and consideration rarely given, to the duties already imposed upon the same commodities. It was therefore not unusual for an additional duty by way of percentage upon value to be added to an original duty payable upon bulk, and *vice versâ*. Pitt's Customs Consolidation Act of 1787 was intended to remedy these inconveniences, the means adopted being the abolition of the existing duties on all articles and the substitution of one single duty on each article, equivalent to the aggregate of the various duties which had previously been imposed thereon. A further consolidation upon the same lines was effected in 1825; and in 1853, in consequence of the reforms introduced by Sir Robert Peel and Mr. Gladstone, the laws relating to the customs were again the subject of a consolidating Act. By this Act of 1853 the whole law was summarised so briefly, comprehensively, and clearly, as to be brought within the grasp of any person of ordinary education and intelligence.

To-day the Customs Laws are represented by the Customs Consolidation Act of 1876, with some few later amending and extending statutes. To deal at all comprehensively with this body of the law would be to trespass unreasonably upon the limits of this work. It should be sufficient to state here that these Acts comprise the whole law respecting the importation, exportation, warehousing, smuggling, &c., of goods, with the regulations to be observed in the coasting, colonial, and foreign trade. Special topics, of which some titles are given at foot of this article, will be dealt with in their appropriate positions in this book. The collection of the customs is in the hands of H.M. Commissioners of Customs, subordinate to whom is a large body of collectors, inspectors, surveyors, examining officers, and other officials. The central office for the kingdom is at the Custom-House in London, connected with which are other offices situate in all the important seaports. It is at a custom-house that duties and drawbacks are paid or received, and through which alone all goods are imported or exported, and ships "cleared."

The tariff.—One of the most important and at the same time remarkable parts of the customs law is the tariff—the document or schedule of duties collected by the customs authorities. Its importance is obvious when it is remembered that the Customs collect about one-fourth of the whole revenue of the Crown. Only one other source of revenue—the excise—exceeds

it in amount. The tariff is remarkable in the fact of the extraordinary decrease within the past half century in the number of articles it has comprised. In 1842 the Customs collected duties upon about 1200 articles, in 1845 upon about 750, in 1860 upon 48, and at the end of the last century upon only 16; and now, 1910-11, there are very few more. It is undoubtedly open to argument whether or no this source of public revenue is made so available for the financial needs of the country as it might be. But whatever view one may take of that question it is certain, in face of the above-mentioned decrease, that an attitude of persistent opposition to an increase of taxation by means of the customs is at least unreasonable. Great Britain may probably lay rightful claim to the possession of the smallest tariff in the world. This tariff we will now set out, and it may be seen that all the duties are *specific*, *i.e.* they are a fixed amount based on a fixed quantity—so much per lb. or per gallon, for example. In many other countries the duty is *ad valorem*—a percentage on the value of the articles; and in some countries both classes of duty may be found, and even occasionally imposed on the same articles.

LIST OF ARTICLES OF MERCHANDISE IMPORTED into the UNITED KINGDOM, showing the Designations by which they are to be distinguished and the Denominations, whether of Quantity or Value, by which they are severally to be stated in the Entries, together with the RATES of DUTY in all cases in which they are chargeable.

N.B.—Reference should be made to the Appendix to Vol. III., wherein this List is completed up to the year 1911.

		Duty.
		£ s. d.
Beer and Ale, viz. :—		
Mum, Spruce, or Black Beer, Berlin White Beer, and other preparations, whether fermented or not, of a character similar to Mum, Spruce, or Black Beer—the worts of which were, before fermentation, of a specific gravity of—		
Not exceeding 1215 degrees	bl. of 36 gls.	1 13 0
Exceeding 1215 degrees	bl. of 36 gls.	1 18 8
Of other sorts, viz. :—		
The worts of which were, before fermentation, of a specific gravity of 1055 degrees	bl. of 36 gls.	0 8 3
And so in proportion for any difference in gravity.		
Cards, Playing	doz. pks.	0 3 9
Chicory, Raw or kiln-dried	cwt.	0 13 3
Roasted or ground	lb.	0 0 2
Chicory (or other vegetable substances) and Coffee, roasted and ground, mixed	lb.	0 0 2
Other vegetable matter applicable to the uses of Chicory or of Coffee	cwt.	free.
Chinaware or Porcelain, and Earthenware	cwt.	free.
Chloral hydrate	lb.	0 1 9
Chloroform	lb.	0 4 4
Cider and Perry	gallon.	free.
Clocks	number.	free.
Parts thereof	value.	free.

		Duty.
		£ s. d.
Coal, Culm, Cinders, and Shale	ton.	free.
Cocoa	lb.	0 0 1
Cocoa husks and shells	cwt.	0 2 0
Cocoa or Chocolate, ground, prepared, or in any way manufactured	lb.	0 0 2
Cocoa butter	lb.	0 0 1
Coffee, Raw	cwt.	0 14 0
Kiln-dried, roasted, or ground	lb.	0 0 2
Collodion	gallon.	1 14 11
Confectionery (not containing any article liable to duty)	cwt.	free.
Confectionery, in the manufacture of which Spirit has been used (such duty to be in addition to any other existing duty to which such Confectionery is at present liable)	lb.	0 0 0½
Ether, Acetic	lb.	0 2 7
Butyric	gallon.	1 1 10
Sulphuric	gallon.	1 16 6
Ethyl, Bromide	lb.	0 1 5
Chloride	gallon.	1 1 10
Iodide of	gallon.	0 19 0
Fruit, dried or preserved, liable to duty:—		
Currants	cwt.	0 2 0
Figs and Fig Cake	cwt.	0 7 0
Plums, commonly called French Plums and Prunelloes	cwt.	0 7 0
Dried or preserved (including dried Apricots)	cwt.	0 7 0
Prunes	cwt.	0 7 0
Raisins	cwt.	0 7 0
Soap and Soap Powder	cwt.	free.
Transparent, in the manufacture of which Spirit has been used	lb.	0 0 3

		Imported in Casks.	Imported in Bottles.
Spirits and Strong Waters:—		£ s. d.	£ s. d.
For every gallon computed at hydrometer proof of Spirits of any description (except Perfumed Spirits), including Naphtha or Methylic Alcohol, purified so as to be potable; and mixtures and preparations containing Spirits:—			
Enumerated Spirits:—			
Brandy	per proof gal.	0 15 1	0 16 1
Rum	per proof gal.	0 15 1	0 16 1
Imitation Rum	per proof gal.	0 15 2	0 16 2
Geneva	per proof gal.	0 15 2	0 16 2
Additional in respect of Sugar sweetening	per proof gal.	0 0 1	0 0 1

	Imported in Casks.	Imported in Bottles.
	£ s. d.	£ s. d.
Unenumerated Spirits:—		
Sweetened . . . . per proof gal. (Including Liqueurs, Cordials, Mixtures and other preparations containing Spirits: *if tested*).	0 15 3	0 16 3
Not sweetened . . . per proof gal. (Including Liqueurs, Cordials, Mixtures and other preparations containing Spirits, provided such spirits can be shown to be both *Unenumerated* and *Not Sweetened: if tested*).	0 15 2	0 16 2
Liqueurs, Cordials, Mixtures and other preparations containing Spirits, in bottle, entered in such a manner as to indicate that the strength is *not to be tested* . . . per liquid gal.	—	1 1 5
Perfumed Spirits . . . per liquid gal. (And so in proportion for any less quantity).	1 4 1	1 5 1
Any importations of Naphtha or Methylic Alcohol purified so as to be potable are rated under the heading of *Unenumerated Spirits*.		
		Duty. £ s. d.
Tea	lb.	0 0 5
Tobacco, Unmanufactured:—		
Stemmed or stripped:—		
Containing 10 lbs. or more of moisture in every 100 lbs. weight thereof . . .	lb.	0 3 8½
Containing less than 10 lbs. of moisture in every 100 lbs. weight thereof . . .	lb.	0 4 1½
Unstemmed:—		
Containing 10 lbs. or more of moisture in every 100 lbs. weight thereof . . .	lb.	0 3 8
Containing less than 10 lbs. of moisture in every 100 lbs. weight thereof . . .	lb.	0 4 1
Manufactured:—		
Cigars	lb.	0 7 0
Cavendish or Negrohead	lb.	0 5 4
Snuff, containing more than 13 lbs. of moisture in every 100 lbs. weight thereof . . .	lb.	0 4 5
Not containing more than 13 lbs. of moisture in every 100 lbs. weight thereof . .	lb.	0 5 4
Other manufactured Tobacco	lb.	0 5 8
Cavendish or Negrohead Tobacco manufactured in Bond in the United Kingdom from unmanufactured Tobacco, on the entry thereof for home consumption	lb.	0 4 8

Containing the following rates of proof spirits, verified by Sykes' Hydrometer:—	Not exceeding 30 Degrees.	Exceeding 30, but not exceeding 42 Degrees.	Duty on Wines imported in bottles, in addition to the duty in respect of alcoholic strength.
Wine:—	£ s. d.	£ s. d	£ s. d.
Imported in casks . per gallon	0 1 3	0 3 0	
Imported in bottles:—			
Still . . . . per gallon			0 1 0
Sparkling:—			
Champagne . .			
Saumur . .			
Burgundy . .			
Hock . . . per gallon			0 2 6
Moselle . .			
Other sorts . .			

And for every degree or part of a degree beyond the highest above charged, an additional duty of 3d. per gallon.

The word "degree" does not include a fraction of the next higher degree.

Wine includes lees of wine.

Wines from Spain must be entered under the descriptions of "Red" and "White"

N.B.—Goods not prohibited to be imported into or used in Great Britain or Ireland, composed of any article liable to duty as a part or ingredient thereof, are chargeable with the full duty payable on such article, or if composed of more than one article liable to duty, then with the full duty payable on the article charged with the highest rate of duty.

And see CONTRABAND; BONDED WAREHOUSE; LANDING.

D

DAIRIES.—It is not lawful for any person to carry on in the district of any sanitary authority the trade of cow-keeper, dairyman, or purveyor of milk, unless he is duly registered as such. Each sanitary authority keeps a register for the registration of persons from time to time carrying on such a trade. But the mere fact of a person being registered does not authorise him to occupy as a dairy or cow-shed any particular building, or preclude any proceedings being taken against him for non-compliance with any of the regulations concerning his trade. The sanitary authority must give public notice from time to time, by advertisement in a newspaper circulating in its district, and if it thinks fit by placards, handbills, or otherwise, of registration being required, and of the mode of registration. A person who trades as a cow-keeper or dairyman for the purpose only of making and selling butter and cheese, or both, and does not trade as a purveyor of milk, need not be registered; nor need any one who sells milk of his own cows in small quantities to his workmen or neighbours for their accommodation.

Construction of new dairies.—No person who follows the trade of cow-keeper or dairyman is permitted to begin to occupy as a dairy or cow-shed any building not so occupied on the 30th June 1885, unless and until he first makes provision, to the reasonable satisfaction of the sanitary authority, for the lighting and the ventilation, including air space, and the cleansing, drainage, and water-supply of the building while occupied as a dairy or cow-shed. He must not begin to so occupy such a building without first giving one month's notice to the sanitary authority of his intention so to do. *Sanitation.*—A cow-keeper or dairyman must not occupy as a dairy or cow-shed any building if and so long as the lighting and the ventilation, including air space, and the cleansing, drainage, and water-supply thereof are not such as are necessary and proper—(*a*) for the health and good condition of the cattle therein; and (*b*) for the cleanliness of milk-vessels used therein for containing milk for sale; and (*c*) for the protection of the milk therein against infection or contamination.

Contamination of milk.—It is not lawful for any person trading as a cow-keeper or dairyman or purveyor of milk, or being the occupier of a milk store or milk shop—(*a*) to allow any person suffering from a dangerous infectious disorder, or having recently been in contact with a person so suffering, to milk cows or to handle vessels used for containing milk for sale, or in any way to take part or assist in the conduct of the trade or business of the cow-keeper or dairyman, purveyor of milk, or occupier of a milk store or milk shop, so far as regards the production, distribution, or storage of milk; or (*b*) if himself so suffering, or having recently been in contact as aforesaid, to milk cows or handle vessels used for containing milk for sale, or in any way to take part in the conduct of his trade or business, so far as regards the production, distribution, or storage of milk, until in each case all danger therefrom of the communication of infection to the milk or of its contamination has ceased. And see further hereon the article DAIRIES in the Appendix.

No water-closet, earth-closet, privy, cesspool, or urinal is allowed to be within, or in communication directly with, or to ventilate into, any dairy or any room used as a milk store or milk shop. After the receipt of notice of not less than one month from the local sanitary authority calling attention to any contravention of the foregoing, the dairyman must forthwith remedy the evil. Nor may he use a milk store or milk shop in his occupation, or permit it to be used, as a sleeping apartment, or for any purpose incompatible with the proper preservation of the cleanliness of the milk store or milk shop, and of the milk vessels and milk therein, or in any manner likely to cause contamination of the milk. Nor may he keep any swine in any cow-shed or other building used by him for keeping cows, or in any milk store or other place used by him for keeping milk for sale.

Diseased milk.—If at any time disease exists among the cattle in a dairy or cow-shed, or other building or place, the milk of a diseased cow therein—(*a*) must not be mixed with other milk; and (*b*) must not be sold or used for human food; and (*c*) must not be sold or used for food of swine or other animals, unless and until it has been boiled.

Local regulations.—The sanitary authorities have power to, and usually, make regulations for the following purposes or some of them:—(*a*) For the inspection of cattle in dairies; (*b*) for prescribing and regulating the lighting, ventilation, cleansing, drainage, and water-supply of dairies and cow-sheds in

the occupation of persons following the trade of cow-keepers or dairymen; (*c*) for securing the cleanliness of milk stores, milk shops, and of milk vessels used for containing milk for sale by such persons; (*d*) for prescribing precautions to be taken by purveyors of milk and persons selling milk by retail against infection or contamination. Persons guilty of an infraction of any of the foregoing regulations are liable to a penalty of £5, and £2 for each day on which the offence continues after written notice. In addition to the foregoing, in London the County Council has power to seize and slaughter cows suspected of tuberculosis of the udder, paying to the owner three-quarters of its value (but not exceeding £22, 10s.) if the suspicion is verified, or, if the animal is found free from such tuberculosis, its full agreed value (but not exceeding £20), together with a further £1. And since 1st July 1908 the Council has had power to enter dairies and take samples with a view to discovering such tuberculosis.

Inspection.—When a local medical officer of health is in possession of evidence that some person in his district is suffering from an infectious disease attributable to milk supplied from a particular dairy, he should report the facts to the magistrate within whose jurisdiction the dairy is situated. The magistrate will then order the medical officer of health to inspect the dairy, and if the medical officer of health is accompanied by a veterinary inspector or surgeon, to inspect the animals also. For this purpose the word "dairy" includes a farm, farm-house, cow-shed, milk store, milk shop, or other place from which milk is supplied, or in which milk is kept for the purposes of sale. After the inspection the medical officer of health will make a report to the sanitary authority, and the latter may give notice to the dairyman, cow-keeper, purveyor of milk, or occupier of dairy concerned, to appear before them within a specified time to show cause why he should not be ordered to discontinue supplying any milk within their district until the order is withdrawn. To refuse to allow the inspection is to incur a fine on the scale above mentioned. In default of payment of the fine, or its recovery by distress, the offender is liable to imprisonment without hard labour.

DAMAGED DUTIABLE GOODS.—If the Board of Customs is satisfied that by unavoidable accident, either in course of delivery from a bonded warehouse or during removal under bond, on board ship, or in shipping or landing, or in course of receipt into a warehouse, *dutiable goods* have been lost or destroyed, and not gone into consumption, those goods will be deemed to have been duly accounted for, and the duty will not be insisted upon In all such cases the whole of the facts must be specifically stated, and the fullest obtainable evidence of the loss and its unavoidable character be adduced in the application for the remission of the duty. In case the accident takes place during removal from warehouse to warehouse, and not in the presence of an officer of the customs, the duty will only be remitted upon evidence on oath that the package containing the goods which was under removal has not been tampered with. But regard must be had to the following three points:—(1) The accident must have been unavoidable, and have taken place in a public thoroughfare or a public place; (2) The course of the package up to where the accident occurred should be satisfactorily traced; (3) Immediate notice must be given to the nearest revenue officer and evidence produced to his satisfaction of the injury to the package, and of the consequent loss.

Damage or loss in warehouse.—If goods are lost or destroyed by fire or other unavoidable accident while deposited in a bonded warehouse, the duty thereon may be remitted. But each case will be investigated, and an account taken of any goods that remain, as soon as possible after the accident is made known, in order that the surveyor or supervisor may report to the Board. The owner of the goods must make application for the remission in writing. The Board will investigate into all the possible causes of the accident, and into the general management of the warehouse by its keeper. Should a leakage be at any time discovered, it is the duty of the owner to repair the cask, or to rack the wines or spirits into another cask. *See* BONDED WAREHOUSE.

DAMAGES.—Every person is at the present day interested in this subject. In matters of business, breaches of contract are always demanding attention, and in the everyday acts of life, as well as in those of business, wrongs to the person and to property are of universal occurrence. Generally speaking it may be said that wherever there is a breach of contract or a wrong independent of contract, there necessarily arises a question as to damages. When a contract is broken or when a wrongful act is committed, the person who suffers therefrom thinks naturally and properly of compensation therefor. It is this compensation which is known as "damages," though to be strictly correct the compensation should be pecuniary, and one moreover for which the law permits an action to be maintained. Compensation in the form of goods or an exchange of services, for example, could not be recovered as damages; nor could a compensation which, though pecuniary, would not be allowed by the law, as in the case of a breach of an illegal contract.

Damages are either **liquidated** or **unliquidated.** The former would exist in the case of a contract in which the parties have agreed upon a certain fixed sum to be paid as compensation in the event of its breach. If such a sum is not so fixed the damages are said to be *unliquidated*, and they remain open for ascertainment when the breach has occurred. Should the parties then fail to agree between themselves the amount of damages, an action is brought and they will be ascertained by the court in accordance with the rules by which the amount of damages is ascertained. It is only in cases arising out of contract that damages can be liquidated; in all cases of tort, or wrong independent of contract, damages are always and necessarily unliquidated. In contracts in which it is intended to liquidate the possible damages, it is usual to provide specifically that the sum agreed shall be considered to be liquidated damages and not a penalty. The reason for this proviso is that *primâ facie* a sum agreed to be paid in case of a breach is taken to be in the nature of a penal imposition—one which a court would not consider itself bound to enforce unless satisfied that the imposition is a reasonable one. But merely labelling a specified sum as liquidated damages will not absolutely exclude the court from exercising its discretion in the particular case; the court will always, when necessary, look to the real intention of the parties and see whether the sum agreed to be paid is really, in fact, liquidated damages or by way of penalty, and if the latter it will not be enforced. If, however, the damage which may arise from a breach is absolutely and entirely uncertain, the court will rigidly enforce the payment of the amount agreed upon as liquidated damages, and will not consider the question of penalty at all. A sum specifically agreed as a penalty does not

limit the amount which may be recovered in an action for damages. When damages are liquidated the party entitled to them is in a position to issue a specially endorsed writ in the High Court, and in case the defendant enters an appearance, to obtain speedy judgment under Order XIV., without incurring the delay and inconvenience of a trial of the ACTION (*q.v.*). Claims for unliquidated damages are not within the scope of Order XIV., and their satisfaction can be obtained only after their assessment by the court.

"Where there is a right there is a remedy," runs a well-known maxim of the law; and consistently with this it may be laid down generally that wherever there is an infraction of a right—as in a breach of contract or a perpetration of a wrong—there is also a right of action for it. There are two points which should be borne in mind in this connection:—first, a man can maintain an action for an injury although he has suffered no actual damage; second, he cannot maintain an action for damages unless he has suffered an injury. By injury is here meant one which the law recognises as such, not, for example, a merely moral injury. Damages may be either nominal, special, general, or vindictive. *Nominal damages* are of the least pecuniary value, being those which are necessarily coexistent with the mere fact of a legal injury, or those which are awarded in cases where the party has sustained no real or substantial detriment. When a plaintiff is awarded a farthing damages in a libel action, for example, it is understood thereby that he has not suffered any possible harm from the libel complained of, and has been awarded that sum only as some recognition of his legal right. *Special damages* are the real and specific damage suffered by the party complaining of the wrong. The law does not itself infer that any special damages have been inferred, and consequently they must be specially proved. If a person suffers a personal injury, his special damage would be such expenses and losses as medical attendance and loss of employment. In some cases, such as certain kinds of slander, an action for damages cannot be maintained unless the plaintiff can prove special damage. *General damages* are in the nature of a recompense or solatium for general loss and inconvenience, beyond and including any special damage; these general damages are inferred by the law, and do not require special proof. A person who has recovered damages once cannot bring another action in respect of the same injury against the same person, not even if he has suffered a further and consequential damage. Such a case might arise where a person meets with a railway accident, suffers certain injuries, and sues and recovers damages from the railway company, but after the action has been disposed of the injuries develop into more serious results than was anticipated at the time of the trial of the action. *Vindictive damages* are usually met with in such cases as breach of promise, seduction, and libel, and their object is to serve as much for a punishment of the wrong-doer as a recompense to the person wronged.

Damages are usually assessed by a jury, but they are very frequently left to the judge alone. Even if a jury have assessed the damages after a proper trial, the verdict may be set aside and a new trial obtained if the jury have not exercised a reasonable discretion, and the amount awarded is grossly and obviously inadequate or in excess of the merits of the case. When the damages are entirely a matter of calculation, it is usual to have the case referred to a master or referee of the Court. *Damages must not be too*

remote; they must flow naturally and directly from the wrong complained of —this is a most important rule in the assessment of damages, but also one which is often difficult to apply to a particular case.

Natural consequences of a wrongful act.—*Physical damage and personal inconvenience.*—When a jury is called upon to assess damages for personal injuries occasioned by negligence, they are expected to take into consideration two matters—first, the pecuniary loss occasioned by the accident, and secondly, the injury the party sustains in his person or in his physical capacity of enjoying life; and as regards the first, they should take into account not only his present loss, but his incapacity to earn a future improved income. In the case of a death caused by accident the jury cannot now, by an Act of 1908, take into account any sum received from an insurance. If, in the opinion of a jury, great fright is a reasonable and natural consequence of the circumstances in which the defendant has placed a plaintiff, and the health of the latter has been injured in consequence of that fright, damages may be obtained for the ill-health, notwithstanding the fact that nothing more than a fright was caused by the defendant. If the owner of property gives another person authority to deal with it in a particular way, and such person chooses to deal with it in another way, he must take the risk of the consequences, and is liable for its loss or injury, unless it would have occurred in whichever way the property may have been dealt with. The loss of profits on contracts which a person might possibly or probably have entered into would be too remote to be included in the damages he could recover in an action brought in respect of personal injuries.

Measure of damage.—At the commencement of the preceding paragraph has been set out the rule for estimating damages in actions for personal injuries. In the case of a loss by reason of breach of contract, the rule is that the person who sustains that loss shall be placed, so far as money can do it, in the same situation as if the contract had been performed. But no damages can be in general recovered that are incapable of being specifically stated and appreciated with certainty, and which depend merely on the feelings or inclination of the jury to give. Generally speaking, the law is very niggardly in its assessment of damages for breach of contract. If, for example, the defendant through his negligence had spoilt a picture to which the plaintiff assigned a great value because of some personal interest in it, the plaintiff could only recover its market value—the personal value would be disregarded. On the other hand, if the plaintiff had never known the value of the picture, and it turned out to be of a very great market value, the defendant would be liable to damages based on the high value. But where the damages are claimed as a consequence of fraud there is generally a more liberal assessment.

On the breach of an *agreement to lend money*, if the party is deprived of the opportunity of getting money elsewhere, and has suffered special damage, he may recover substantial and not merely nominal damages. In the case of **non-acceptance** of goods, the vendor is entitled to sell them and recover from the purchaser the full amount of the difference between the contract price and that which the sale realises. The rules relating to breach of contracts in respect of stocks and shares would be the same as those in respect of goods. In *non-delivery*, the measure of damages is the price at which goods can be obtained in the market, if there is one at the place and time at which the goods ought to have been delivered; if not, the damages must be ascertained by taking into consideration, in addition to the cost price and

expense of transit, the reasonable profit of the purchaser. If there has been a *sub-sale* of the goods, and they are not obtainable in the market at the place of delivery, the price on the sub-sale is evidence of the value of the goods, and the amount by which the price on the sub-sale exceeds the contract price may be recovered as damages although the seller at the time of the contract had no notice of the sub-sale. It may be taken as a general rule that the proper measure of damage on the breach of a contract of sale is the difference between the contract price and the market price at the time of the sale. But if the goods are paid for at the time of purchase, the measure of damages is, in addition to the price paid, the difference between that price and the highest price the goods have attained up to the time of trial, if the price has risen above the price paid.

In the case of non-delivery by *a carrier*, the damages recoverable are such as may reasonably be supposed to have been in the contemplation of the parties at the time they entered into the contract of carriage, as to what would be the probable result of its breach. This may be taken as the difference between the market value on the day the goods ought to have been brought to market and the day on which they were afterwards actually brought to market, even though no notice has been given to the carrier that the goods were intended for the market. But if there has been no absolute undertaking on the part of the carrier, and he has under the circumstances used all reasonable care to deliver with the utmost possible despatch, he will not be liable for the loss of market. These damages are therefore only recoverable where the carrier has negligently delayed the transit and delivery of the goods. If notice of special purpose has been given, a carrier would be liable for any loss of profits which may naturally and reasonably have occurred through the carrier's default. Two cases on the point may be useful, each of which has an opposite result.

In the first, the plaintiff delivered a parcel at a receiving office of a railway company in London, addressed to "W. H. M., Stand 23, Show Ground, Lichfield, Staffordshire; van train." The person who delivered the parcel at the receiving office said nothing as to the purpose for which the parcel was being forwarded, nor did he draw attention to the label. It was held that the label was sufficient notice to the defendants that the goods were being sent to a show, and that the plaintiffs were entitled to recover damages for loss of profits and expenses incurred by the goods being delayed, and not delivered at Lichfield in time for the show. In the second case the plaintiff forwarded a parcel of samples by a railway company who had notice of the nature of the contents. The parcel was delayed in transit until the season at which the samples could be used for procuring orders had elapsed, and they had in consequence become valueless. The plaintiffs could not have procured similar samples in the market. It was held that they were entitled to recover as damages the value to them of the samples at the time when they should have been delivered.

Aggravation and mitigation of damages.—In an action for damages for an injury, the jury may take into consideration all the circumstances attending its committal, and if these circumstances show that the wrong-doer has acted wilfully, with gross negligence, with a high hand, or with a malicious intention, they may award damages from the point of view of an aggravation by the wrong-doer. Persisting in an original false charge, as where the defendant in an action for damages for false imprisonment pleads a justification, is also evidence of an aggravated injury, and as such may be

specially considered by the jury when they assess damages. But on the other hand a plea of justification would, so far as it might be successful, be a ground for mitigation of damages. Thus in an action for libel, false imprisonment, or wrongful dismissal, the defendant may plead such facts connected with his wrong-doing as will tend to impress the jury with a belief that he was to some extent justified in acting as he did; but failure in such a plea may be, as we have already seen, an aggravation of the offence. In cases that hinge upon the general character of the plaintiff a defendant may, upon giving certain notice, give special evidence of the plaintiff's bad character and rely upon that in mitigation of damages; but here again he should be careful lest the plaintiff can contradict that evidence, in which case his attempt to discredit the plaintiff will be an aggravation. The jury have a very wide field of review in assessing damages; but they may not take into consideration the costs of the action—this being a question in the sole discretion of the judge. Although a plaintiff in an action for injury done really has a right of action against the defendant, the jury can look at all the circumstances of the case and at the conduct of both parties, and if they think that in going on with the action the plaintiff has acted in an obstinate and perverse manner, they may take that into consideration when estimating the damages.

Prospective and continuing damages.—We have already seen that a plaintiff cannot sue the same person more than once for the same wrong; not even when insufficient damages have been awarded. When the cause of action is complete, it would be increasing litigation to say, "You shall not have all you are entitled to in the first action, but you shall be driven to a second, third, or fourth, for the recovery of your damages." A plaintiff should therefore be careful that all his prospective as well as his present damages are claimed in the one action. In an action for personal injuries, damages may be awarded not only for the loss and inconvenience of the disability down to the time of the action, but also for afterwards down to the time when, as it appears on evidence, the disability may be expected to cease. Continuing damages, usually arising out of nuisances, &c., are those which arise from the repetition of acts or omissions of the same kind as that for which the action was brought; they may be assessed from time to time according to the direction of the court. *See* ACCIDENT.

DANCING HOUSE.—A place kept for public dancing, within the administrative county of Middlesex, must be licensed by the County Council, and in default the keeper thereof may be convicted by the local magistrates and visited with heavy penalties. But a licence is not required for the occasional public use of a place for dancing; only places kept *habitually* for the purpose of dancing being within the scope of the law. Nor is it necessary to obtain the licence to meet a case where dancing is only an incidental or subsidiary part of the entertainment or performance. In the county of London there is a similar requirement, and also in any other districts the authorities of which have adopted that part of the Public Health Act of 1890 which relates to this matter. Generally speaking, the provisions relating to dancing are the same as, and part of, those relating to music halls.

DANGEROUS BUILDINGS.—The owners of buildings or walls, or anything affixed thereon, in urban districts, are responsible to the local

authorities for keeping them in good order. Should the local surveyor consider them to be in a ruinous state, and dangerous to passengers or to the occupiers of the neighbouring buildings, he may immediately cause a proper board or fence to be put up for the protection of passengers. He must also give notice in writing to the owner if he is known and resident within the district, and also affix the notice to the door or other conspicuous part of the premises, or give it in any other way to the occupier. The notice should call upon the owner or occupier forthwith to take down, secure, or repair the building, wall, or other thing, as the case may require. Should the owner fail to begin to comply with the requirements of the notice within the space of three days after the notice has been given or affixed, and complete the work as speedily as the nature of the case will admit, the surveyor may lay a complaint before the magistrates. Thereupon the magistrates will order the owner, or in his default the occupier, if any, to take down, rebuild, repair, or otherwise secure the premises, or any part thereof that appear to them to be in a dangerous state, and to do so to the satisfaction of the surveyor within such time as they shall fix. In default of compliance with this order, or in case no owner or occupier can be found upon whom the order can be served, the local authorities will forthwith undertake the execution of the requisite work, and the expenses thereof will be payable by the owner.

DANGEROUS GOODS.—*Consigning by railway or tramway.*—There is a penalty of £20, and in default of distress, imprisonment, inflicted upon any person who so consigns any oil of vitriol, gunpowder, lucifers, or other goods in the judgment of the company of a dangerous nature, without distinctly marking upon the packages their nature, or giving notice thereof in writing to the servant of the company with whom they are left at the time of sending. *Consignment by British or foreign ship.*—The consignment by ship of dangerous goods is dealt with by the Merchant Shipping Act, 1894, in which Act the expression "dangerous goods" means aquafortis, vitriol, naphtha, benzine, gunpowder, lucifer matches, nitro-glycerine, petroleum, any explosives within the meaning of the Explosives Act, 1875, and any other goods which are of a dangerous nature. No person may send or attempt to send by any vessel, British or foreign, and no person not being the master or owner of the vessel may carry or attempt to carry in any such vessel, any dangerous goods, without distinctly marking their nature on the outside of the package containing them, and giving written notice of their nature and of the name and address of the sender or carrier thereof to the master or owner of the vessel at or before the time of sending them to be shipped or taking them on board the vessel. The penalty for non-compliance herewith is £100; but it is only £10 if the consignor was merely an agent for shipment, and was not aware and did not suspect and had no reason to suspect that the goods were of a dangerous nature. To knowingly send or attempt to send such goods under a false description is to incur a fine of £500. A consignor of dangerous goods by any carrier is liable to the latter for damage caused by the goods in any case where he has not given notice to the carrier of the character of the goods.

The master or owner of a vessel may refuse to take on board any package he suspects to contain dangerous goods, and may require it to be opened to ascertain the fact. If a master or owner discover amongst the cargo any dangerous goods, or goods which in his judgment are dangerous, he may

throw them overboard if they are not properly marked, or if proper notice had not been given when they were consigned. He is not legally liable in any way whatsoever in respect of such an act. A court having Admiralty jurisdiction may seize any dangerous goods illegally consigned, and declare them to be forfeited and dispose of them; all this may be lawfully done although the owner himself of the goods has committed no offence, and is not before the court and has no notice of the proceedings. *See* GUNPOWDER AND EXPLOSIVES.

DANGEROUS PERFORMANCES.—It is a punishable offence to cause a youth under the age of sixteen years, or a young woman under the age of eighteen years, to take part in a public exhibition or performance whereby his or her life and limbs are endangered. It is for the magistrates to decide whether the performance is dangerous, and no one can take proceedings except with the written consent of the chief of the local police; but if an accident causing actual bodily harm has already occurred, any one may take proceedings without such consent, and if the offender is convicted therefor on indictment, the court, in addition to punishing him, may order him to compensate the injured child to the extent of a sum not exceeding £20. If the child has the appearance of being under the prescribed age, the court may presume that such is the fact, and throw upon the person charged the onus of proving the contrary.

DATING FORWARD occurs in cases where a seller of goods on credit dates the invoice or bill thereof some time later than the time of the actual sale or delivery. The object of this is to still further extend credit, and is done in favour of an unwilling or impecunious person as an inducement for him to buy. A simple illustration will explain this custom: A manufacturer is selling goods in the ordinary course at say 2½ per cent. discount in one month, or net in three months, but as an inducement in a particular case he agrees to invoice them as from say one month after the date of their delivery. In this way the purchaser obtains an additional month's credit. The practice is in most cases an economically and a commercially unsound and questionable one, which should be avoided by both seller and buyer.

DAY is a word with varying significance in both legal and mercantile usage. Generally speaking a day may be said to be that period of time which elapses from one midnight to the succeeding one; and it is this sense that the law usually adopts, thereby making the legal day correspond with the natural one. In England and Scotland the time would be measured by Greeenwich mean time; in Ireland, by Dublin mean time. The law does not regard portions of a day. From this it follows that a man who is sentenced to imprisonment for one day must be released before midnight of the day on which he is imprisoned, even if the imprisonment therefore only extends over an hour or two. But in certain connections the day is not understood by the law as corresponding with the natural one. For illustration of this, reference may be made to the law of distress, for a landlord is limited to a day which comprises only the hours between sunrise and sunset wherein to lawfully distrain; and so to break into a house between the hours of 6 A.M. and 9 P.M. would be taken as a breakage during the day, and the offender would be punished for housebreaking as distinguished from burglary, which is a breaking into a house by night. Again, a day may be only a "working-day,"

and as such recognised by the law; thus service of many proceedings of the law is invalid if made after the hour of 6 P.M. on a week-day, except Saturday, when the limit is 2 P.M. Generally speaking, all business contracts and appointments should be performed and kept during the business or working day. Sunday is a *dies non* for service and executions in civil proceedings, and accordingly a debtor cannot be served with a writ on that day, nor can he then be arrested under the Debtors Act. But this rule does not extend to criminal proceedings. *See* DAYS OF GRACE.

DEAD FREIGHT.—The freight on the carriage of goods by ship is usually fixed by a bill of lading or charter-party, which at the same time may stipulate a specific quantity of goods which the shipper or charterer must ship. This quantity may be fixed in terms of a lump sum, or either so much per ton weight of goods or so much per ton of space of the ship—forty or fifty feet to the ton, for example. In any of these cases the shipper or charterer is bound by the stipulation, and the gross sum intended to be payable in respect thereof is required to be paid by him, without deduction, in case he should not ship a sufficient cargo. It is the difference between the cargo actually shipped and that which was agreed to be shipped that constitutes the dead freight. But this dead freight is rarely claimed in the case of a ship having a regular service with others of the same line, and carrying a general cargo for different shippers—such a ship generally always leaves port with a full cargo, and the deficient freight finds a place in another ship of the same line.

DEAD-WEIGHT is a term used in charter-parties, and refers to cargo of a heavy and bulky nature. This part of a cargo is usually stowed at the bottom of a ship below the lighter cargo; in such a position it tends to steady the ship. Heavy goods shipped loose in bulk, or those packed in large cases or casks, would come within the meaning of the term.

DEATH DUTIES is the general term used to describe the duties levied upon the estates of deceased persons or on the persons who benefit by their death. This form of taxation is by no means a novel one, for examples thereof may be found in the political economy of ancient Rome, and since those days it has persisted in various guises, and amongst different peoples, until the present day. The duties payable by heirs under the feudal system afford another well-known example. In England the death duties, in their modern form, have for an origin the fixed probate and administration duties imposed in the year 1694, which in 1779 were made to vary according to the amount of the estate. The death duties comprise the following:—(1) PROBATE DUTY; (2) Account Duty; (3) LEGACY DUTY; (4) SUCCESSION DUTY; (5) ESTATE DUTY, each one of which is referred to in a separate article, except Account Duty, which for all practical purposes is now superseded and obsolete.

DEBENTURE is a term which has never received any precise legal definition; as a legal term it is comparatively modern. There are at least two classes of instruments called "Debentures." Apart from that document known as a debenture and which is used as a certificate for the payment of a DRAWBACK (*q.v.*), there is the instrument issued by corporations and companies which also has the general title of debenture. It is with this second class of debentures that this article deals; and such a debenture has been defined in the *Judicial Dictionary* as a "written Obligation or Acknowledg-

ment in an impersonal form, and with conditions more elaborate than those of a Promissory Note, given by or for a Corporation or a Company to secure a sum of money." The term "Debenture" may therefore be taken to mean an instrument granted by a corporation or company as security for the payment of money. From this it is obvious that there is a great difference between a person who holds a debenture—a debenture holder, and one who holds stock as shares—a stock or share holder. The debenture holder is a creditor of the corporation or company—often a secured creditor within the full meaning of the word "secured," whilst the stock or share holder is a member of the corporation or company, and as such a debtor of the debenture holder. But a debenture security exists also in the form of a "stock"—especially in the case of railway companies. The holder of such *debenture stock* would be a creditor of the company with a security on its assets. Debenture stock of a railway company is invariably a permanent security and never repayable. In this respect it differs materially from debenture stock issued by any other class of company.

There undoubtedly exists a very vague knowledge on the part of the general public as to the essential characteristics of a debenture; and the whole of that knowledge may be summed up in an idea such as that a debenture is by its very nature a good and valid security for the money it represents. Men who, if asked to lend a sum of £100 upon the security of a mortgage of a freehold house, would require most satisfactory expert opinion that the property is really a good security for that sum, that the title to the property is a good one, and that the deed of mortgage is in an appropriate and effective form, do not hesitate to advance very large sums to a company upon the security of a debenture without any investigation whatever. The very word "debenture" itself would seem to conjure up in their minds an idea of perfection of security. Rarely do they exercise an independent judgment upon the value of the property offered by the company as security; still less do they consider the form in which the debenture may be issued. It may be a real and effective mortgage of the company's property, or it may only be a mere promise to repay the money—of scarcely higher value than a promissory note; it may be made payable only to the holder of the debenture for the time being registered as such in the books of the company, or it may be payable to bearer; and the money for which it is security may be repayable by the company only upon the expiration of a certain period of time, or it may be repayable at any time at the company's option. All these and many more points of a similar nature should be carefully considered by those who are debenture holders or who intend to occupy that position. And in addition thereto must be considered their general rights; for it should always be remembered that the company is after all only a debtor, and that the debenture holder is its creditor. This article will deal with the subject under the following heads: (1) The various forms which may be taken by debentures, and their transfer; (2) The power of a company to issue them; (3) The property usually comprised therein as security for their due payment; (4) The remedies of debenture holders in case of default in payment or otherwise; and (5) Various other points relating to debentures, such as priorities and registration.

The form of debentures.—In dealing with the form that debentures

may take, the topic may be conveniently dealt with in three divisions: (*a*) From the point of view of the security afforded by the debenture; (*b*) From the point of view of a transfer of the debenture; and (*c*) From the point of view of the period during which the security is intended to subsist.

With regard to (*a*), debentures may be divided into two classes. In the first class are those which purport to give the holder a security by way of mortgage for the money payable under the debenture, and in the second class are those which give no security at all in the ordinary sense of the word. The first class we will call *secured debentures;* the second class, *unsecured debentures.* Secured debentures, also known as mortgage debentures, are those which secure payment by a mortgage or charge of some part of the assets of the company—thus providing a fund or resource out of which, in case of default in payment, the debenture holder may realise the monies due to him. Secured debentures are in various forms. They may be in themselves a mortgage or charge of property; or they may be issued according to the terms of a trust deed to which they would then contain a reference, and which deed is a mortgage of the property of the company for the benefit of the debenture holders; or they may be partly a mortgage in themselves and partly dependent upon a trust deed. The following is an example of a debenture which is in itself a mortgage of the company's property:—

THE HARESLAND BRICK AND TILE COMPANY, LIMITED.

Incorporated under the Companies Act, 1908.

No. DEBENTURE. £100.

Issue of forty first Mortgage Debentures of £100 each, numbered 1 to 40, and bearing interest at the rate of £5 per centum per annum.

1. **The Haresland Brick and Tile Company, Limited** (hereinafter called "the Company"), will on the 31st day of March One thousand nine hundred and eight, or on such earlier day as the principal monies hereby secured become payable in accordance with the Conditions indorsed hereon, pay to the bearer of this Debenture, at the Registered Office of the Company, the sum of One Hundred Pounds.

2. **The Company** will in the meantime pay to the bearer of this Debenture, on production thereof at the place aforesaid, interest thereon at the rate of £5 per centum per annum by equal half-yearly payments on the 31st day of March and the 30th day of September in each year.

3. **The Company** hereby charges with such payments its undertaking and all its property whatsoever and wheresoever, both present and future, including its uncalled capital for the time being.

4. **This Debenture** is issued subject to and with the benefit of the Conditions indorsed hereon, which are to be deemed part of it.

Given under the Common Seal of the Company this day of One thousand nine hundred and ten.

The Common Seal of the above-named Company was affixed hereto in the presence of

L.S. ..... } *Directors.*
..... }
..... *Secretary.*

THE CONDITIONS (*indorsed on the back*).

1. This Debenture is one of a series of forty Debentures of One Hundred Pounds each for securing a total principal sum of Four Thousand Pounds about to be issued by the Company. The Debentures of the said series are all to rank *pari passu* as a first charge on the property hereby charged without any preference or priority one over another, and such charge is to be a floating security, but so that the Company is not to be at liberty to create any mortgage or charge on its property in priority to the said Debentures.

2. The principal monies and interest hereby secured will be paid without regard to any equities between the Company and the original or any intermediate holder of this Debenture.

3. The principal monies hereby secured shall immediately become payable:— (*a*) If the Company makes default for a period of two calendar months in the payment of any interest hereby secured, and the bearer for the time being hereof before such interest is paid by notice in writing to the Company calls in such principal monies; or (*b*) If any of the property of the Company shall be seized in execution or under a distress or otherwise; or (*c*) If an order is made or an effective resolution is passed for the winding-up of the Company.

4. The holder of this Debenture may, with the consent in writing of the holders of a majority in value of the outstanding Debentures of the same issue, appoint by writing any person to be a receiver of the property charged by the Debentures at any time after the principal monies hereby secured have become payable, and any such appointment shall be as effective as if all the holders of Debentures of the same issue had concurred in such appointment.

A Receiver so appointed shall have power:—

(1) To take possession of the property charged by the Debentures.

(2) To carry on or concur in carrying on the business of the Company.

(3) To sell or concur in selling by public auction or private contract any of the property charged by the Debentures.

(4) To make any arrangement or compromise which he shall think expedient in the interest of the Debenture Holders.

(5) All monies received by such Receiver shall, after providing for the matters specified in the first three paragraphs in Clause 8 of Section 24 of the Conveyancing and Law of Property Act, 1881, be applied in or towards satisfaction *pari passu* of the Debentures. The foregoing provisions shall take effect as and by way of variation and extension of the provisions of Sections 19 to 24 of the said Act.

One or two points in connection with the above form may be here usefully referred to. In the first place it will be noticed that the amount secured by this particular debenture is £100 as one of forty debentures of a like sum, amounting in all to £4000. It is this total sum of £4000 that the company is borrowing, and, for the encouragement and convenience of possible lenders, it is divided into forty portions of £100 each. The interest payable is stated on the face of the document; in clause 2 the days upon which the interest is payable; and in clause 1 the day upon which the company undertakes to repay the principal sum borrowed, and which date will be seen to be seven years ahead. Of course the company may not be able to borrow the whole of the £4000, and it is not bound to; but it may not borrow any more than that amount in such a manner as to give the

further lenders an equal security with that held by the holders of the original issue of £4000. The nature of this security will be found in clause 3, and it there appears to be a charge of all the property of the company "whatsoever and wheresoever, both present and future, including its uncalled capital for the time being." A security of this wide nature is known as a "floating charge," for it not only comprehends property at that particular time belonging to the company, but also all property it may afterwards acquire. It is not every debenture that gives so wide a security; it might in some cases be limited to only a portion of the company's property —some of its buildings for instance. But the widest security is not necessarily the best; each security should be valued on its own merits.

In clause 4 it will be seen that the debenture is issued subject to certain conditions indorsed on its back; these conditions are also set out above. Generally the conditions of a debenture are more comprehensive and detailed than those in the example before us, but the form we set out is sufficiently ample to show the nature and object of the conditions, and also to show the necessity for a debenture holder to examine and carefully consider those upon which any debenture is issued in which he may be interested. From the conditions in the above form, in No. 1 will be found the very important information as to whether or no the debenture is a "first charge," one which cannot be prejudiced by a further issue also giving a first charge, or a first charge which has for its security a property already charged, or a second or even third or fourth charge. A first charge is necessarily the best, and, wherever possible, money should only be lent upon debentures which give such a charge and also provide for its maintenance. Where the condition provides that this particular debenture of £100 ranks *pari passu* with the other £100 debentures of the whole issue of £4000, it means that the debenture holders who constitute the lenders of the whole £4000 will share and share alike in the case of the realisation of the security. To glance again at the face of the debenture, it will be noticed that in clauses 1 and 2 the principal and interest are made payable to the "bearer" of it. The debenture being therefore a "bearer security," one which is intended to be transferred by mere delivery, the condition No. 2 is obviously a proper one in view of the protection required by the persons who from time to time may become holders of the debenture. The effect of the condition is to place the holder for the time being of the debenture in a similar position to that held by a holder of a bank-note, bill of exchange, or cheque, the negotiation of which has not been restricted. In condition 3 are found the circumstances under which the principal money secured by the debenture may be claimed by the holder as immediately payable, notwithstanding the fact that the seven years' continuance of the security have not expired. This condition and the subsequent one have in view a provision in case of default by the company, a circumstance which will be alluded to when considering the remedies of a debenture holder. A debenture which is not dependent upon a trust deed should be stamped with the same duty as a mortgage.

With a trust deed.—When debentures are issued under cover of a trust deed, the holders are in a somewhat better position than those whose debentures alone constitute the charge. The trust deed is a legal mortgage of the property by the company to the trustees for the debenture holders. If

the company should make default, the trustees are under that deed entitled to take possession of the property mortgaged, to realise it, and to distribute the proceeds between the debenture holders. Where there is no trust deed, the debenture holders must first apply to the court. But a trust deed is necessary in cases where it is proposed to give debenture holders an option to exchange bearer debentures for registered debentures, and *vice versâ*.

Transfer of debentures.—A debenture holder may and frequently does want to dispose of his security to some one else. He may either want to sell it, or to mortgage, or merely deposit it as a security for a loan. The method by which this can be done will depend upon the form of the debenture; in the example set out above it will be seen that the principal and interest secured thereby is payable "to the bearer of this debenture." These words, or words to like effect, make the document a *debenture to bearer*—a form of bearer security; and as such it is vested with like attributes—from the point of view of its transfer—to a bank-note or other negotiable security. The property in it passes by mere delivery, and no indorsement or deed of transfer is needed in order to vest it in a purchaser. The latter, if he is a *bonâ fide* holder for value of the debenture, is entitled to an absolute property in it, and in the principal and interest secured thereby, notwithstanding any defect in the title by which it has been held by the person from whom he acquired it or by any other prior holder. The only disadvantage to such a security is that, in case it should be lost or stolen, the finder or thief is able to give a *bonâ fide* purchaser from him for value as good a title to it as the true owner himself could have given.

But there is also such a form of debenture as one *to bearer capable of registration*. The holder of a debenture of this class has some further protection than that afforded by a mere bearer security; he may register his debenture with the company at any time, and it is only the registered holder who is entitled to receive the principal and interest from the company. It is usually provided in the conditions indorsed on such a debenture that the receipt of the registered holder alone will be a good discharge to the company. One of the most popular forms of debenture is one in which the principal is payable to the bearer who is registered holder, but to which are annexed coupons for the interest payable to bearer without regard to registration. By this form the debenture holder has the protection of registration so far as the principal money is concerned, but has preserved to him the free negotiability of the interest coupons, which are payable to the mere bearer thereof. He can therefore collect his interest without difficulty, and has, moreover, in these coupons what is in effect a negotiable security.

The period during which the security of the debenture is intended to subsist depends also upon its special form; the security may be only for a certain period of time, in which case it is known as a *determinable debenture*, or it may be for such time as the company continues to regularly pay the interest and to exist, in which case it is a *perpetual debenture*. The latter form is not by any means uncommon, but as the law implies an agreement on the part of every borrower to repay the loan in a reasonable time, a perpetual debenture must be very explicit in order to be upheld as such. But with a good security behind it and a good interest, a perpetual debenture has a peculiar value of its own, especially to those who dislike disturbance

of their investments when once made. We need hardly repeat that the debenture holder will be entitled to payment of the principal in case the company should make default in payment of the interest, or in case it should be wound up. In the case of perpetual debentures, and of others also, the conditions as to repayment and default should be carefully watched. In the example set out above there is an instance of a determinable debenture, and and it will be noticed that the date for the repayment of the loan is fixed seven years ahead. All determinable debentures are not the same in this respect; the term of years may vary in different cases, or repayment may be made by the company at any time after a certain notice, or there may be a provision for repayment upon the basis of a scheme of drawings for redemption.

Power of company to issue.—*Generally.*—It is to the memorandum of association that reference must be made in order to discover the extent of a company's powers to issue debentures. But where a company has power to deal with its property, the law implies a power to mortgage it. Unless duly registered at Somerset House a debenture is void as against the liquidator and creditors of the company. This register is open to the inspection of the public. The company also must keep a register of its debentures, which is also open to public inspection. To issue debentures to bearer would probably require a special and specific power, as such securities are in effect negotiable instruments. But money borrowed for a company, and *bonâ fide* applied for its benefit, would be recoverable even though the directors had no borrowing powers. A railway company would seem to be unable to legally or equitably mortgage its property without the authority of Parliament. On the principle that a company may mortgage its property unless expressly prohibited by its articles from so doing, something more would be required than a mere provision limiting the extent of the borrowing powers in order to invalidate a mortgage beyond the limit of that provision; this rule would not apply, however, in the case of a railway company. But if a lender does not act with common prudence and caution in an advance to a company, and the whole transaction is on the face of it of an irregular character, the court will not give him any relief.

Irregularities.—Where a company has power to issue legally transferable securities, an irregularity in the issue cannot be set up against even the original holder if he had a right to presume that everything was regular. And this, in the absence of evidence to the contrary, is what a lender of money to a company is entitled to presume. Still less can an irregularity be set up against any person who, as a *bonâ fide* transferee for value, has acquired the security from the original holder. If the original conduct of a company was such that the public were justified in treating it as a representation that the securities offered were legally transferable, the company cannot set up an irregularity as against a *bonâ fide* holder for value.

Property comprised in the security.—The assets of a company will not be bound unless the charge thereon is created in the mode and executed with the formalities prescribed by its articles of association. *After-acquired property.*—Under a power to charge the whole or any part of its property, a company can create a valid mortgage of its future property; but the future property should be clearly specified as such in the instrument. Book debts of a company not yet accrued due may be validly charged, when the company

has power to charge *any* part of its property. *Uncalled capital.*—Whenever a company has power to charge all its property, it has also power to charge its capital not called up; and even if it had not that power, there would be probably nothing in the constitution of the company to prevent it passing a special resolution extending its original borrowing powers so as to include the power of mortgaging uncalled capital. A debenture charging a company's "property" does not *primâ facie* include uncalled capital, but it may do so if the debenture is issued in pursuance of articles of association which treat uncalled capital as forming part of the property chargeable. If the articles authorise a charge of uncalled capital, the words "all the assets" in a debenture would be taken as including the uncalled capital. *Floating charge.*—A debenture is frequently in the nature of what is called a floating charge. It is not a charge upon a specific part of the company's property, but is a charge upon the whole of its assets for the time being, leaving the company to deal with them as it thinks fit, by sale, mortgage, or otherwise, until it is stopped either by a receiver or a winding-up. The debenture set out in this article by way of illustration will be seen to create a floating charge, but in that case by condition 1 the company is precluded from creating certain further mortgages over its property. The only practical way in which to regard such a security is to treat it simply as a charge attaching to all the property of the company in preference to the *general* liabilities other than certain preferential claims (sect. 107 of the Act of 1908); that is, its liabilities to creditors not secured by specific charge or statutory preference at the moment the business of the company is put an end to. An end may be put to the company, amongst other ways, by the appointment of a receiver in an action instituted by the debenture holders against the company. It is not always necessary for the words "floating charge" or a similar expression to be used in the debenture in order to constitute it a floating charge. Thus a debenture which charged the "undertaking, and all sums of money arising therefrom," was held to create a floating charge.

Remedies of debenture holders.—*Repayment.*—Where there is a condition for payment of a sum at a time and place certain, the condition is not broken by non-payment at the time unless the demand for payment is made at the specified place. When a company has commenced to wind up, the money secured by the debentures becomes immediately payable, and the debenture is thereupon a security enforceable upon all the assets of the company as they exist at the time of the winding-up. It is immaterial that the date for payment fixed by the debenture itself has not arrived—the winding-up is an acceleration, and entitles the debenture holder to realise the security for the full amount. Satisfaction of a debenture may be entered on the register.

Receiver and manager.—When the company is in default in payment of interest or principal due under a debenture, the holder is entitled to apply to the court for the appointment of a receiver and manager of the property of the company, thereby obtaining protection for his security. Even if there is no interest or principal due, a debenture holder may obtain the appointment of a receiver of the property comprised in his security, if it is in danger or in jeopardy through the insolvency of the company. The holder of a debenture which charges the undertaking of the company has the right to enforce his security if the company parts with the whole, or substantially the whole, of its undertaking and assets otherwise than in the ordinary course of business,

and ceases to be a going concern. In such a case the proper remedy of the debenture holder is by the appointment of a receiver of the property comprised in his debenture.

The court will not appoint a manager of a railway, but it has appointed a receiver and manager of a tramway company. When a company is in such a financial position that its debenture holders are seeking the aid of the court for the realisation of their security, it not infrequently happens that the shareholders or creditors are also endeavouring to obtain a winding-up order. When this is so, under ordinary circumstances the court will appoint the same person to be the receiver on behalf of the debenture holders and to be the liquidator of the company in the winding-up. But if the debenture holders have the additional security of a trust deed, and have thereunder appointed a receiver, the court will probably order possession of the property to be given to him, notwithstanding the appointment of an official liquidator for the winding-up of the company's affairs.

Receivers and managers appointed in a debenture holder's action are in the position of officers of the court, being neither agents of the debenture holders nor agents of the company to make contracts on the company's behalf. They may be personally liable on their contracts made as receivers and managers. If they purport to contract on the company's behalf, they may be liable in damages for breach of warranty of authority.

Foreclosure and sale of the property comprised in the security of debentures is not generally available as a remedy for the debenture holders, especially if the debentures are secured by a trust deed; it is, however, occasionally available in a debenture holders' action. The proper course is for the debenture holders to act, without recourse to the court, under any power of foreclosure and sale which may be conferred upon them by the debenture.

Various points.—*Priorities.*—Subject to any rights possessed by those, if any, who hold the legal estate of the property charged, or who are *bonâ fide* purchasers for value, the holder of a debenture itself, or of one dependent upon a trust deed, specifically charging the property, is entitled to the benefit of the security afforded by that charge to the exclusion of those whose charge is a subsequent one or is in the nature of a floating charge.

Registration.—By the Companies Act, 1908, it is provided that every mortgage or charge created by a company, and being either—(*a*) a mortgage or charge for the purpose of securing any issue of debentures; or (*b*) a mortgage or charge on uncalled capital of the company; or (*c*) a mortgage or charge created or evidenced by an instrument which, if executed by an individual, would require registration as a bill of sale; or (*d*) a mortgage or charge on any land, wherever situate, or any interest therein; or (*e*) a mortgage or charge on any book debts of the company; or (*f*) a floating charge on the undertaking or property of the company—will, so far as any security on the company's property or undertaking is thereby conferred, be void against the liquidator and any creditor of the company, unless filed with the registrar for registration in the manner hereinafter mentioned within twenty-one days after the date of its creation, but without prejudice to any contract or obligation for repayment of the money thereby secured. When a mortgage or charge becomes void under these circumstances the money secured thereby becomes immediately payable. Where the mortgage or

charge comprises property outside the United Kingdom, it will, so far as that property is concerned, be sufficient compliance with the foregoing requirement if a deed purporting to specifically charge the property is registered, notwithstanding that further proceedings may be necessary to make the mortgage or charge valid or effectual according to the law of the country in which the property is situate. The registrar of joint-stock companies keeps at Somerset House a register for the purposes of registration of debentures; and therein he is bound to enter the date of the creation of every mortgage or charge, the amount secured by it, short particulars of the property mortgaged or charged, and the names of the mortgagees or persons entitled to the charge. This register is open to the inspection of any member of the public on payment of a fee of one shilling for each inspection. Where a series of debentures containing any charge, to the benefit of which the debenture holders of that series are entitled *pari passu*, is created by a company, it will be sufficient to enter on the register—(*a*) the total amount secured by the whole series; and (*b*) the dates of the resolutions creating the series and of the covering deed, if any, by which the security is created or defined; and (*c*) a general description of the property charged; and (*d*) the names of the trustees, if any, for the debenture holders. The registrar is required to give to the company a certificate of registration, and the company issuing the debenture must indorse thereon, and on any certificate of debenture stock, a copy of the registrar's certificate. This certificate of the registrar is conclusive evidence that all statutory requirements as to registration have been complied with. Any person interested in a debenture has, equally with the company issuing it, a right to apply for its registration. A member or creditor of a company has the right, upon payment of a fee of one shilling, to inspect at the company's office its register of debentures there kept. A company is also required to keep a register of its mortgages, and this too is open for inspection. *See* COMPANIES; DIRECTORS.

DEBT.—A "debt" may be defined as a fixed and specific sum of money due by certain and express agreement, there being no future valuation required to settle its amount. As, however, the law implies, under certain circumstances, a debt of which the amount remains to be ascertained by future valuation, our definition is perhaps too narrow. It is nevertheless a correct one, and a debt implied by law should be treated as an exception or as a quasi-debt. Such an implied debt would arise when goods are sold and delivered, or bargained and sold, to a purchaser without any agreement as to price; there the law provides that the purchaser must pay a reasonable and proper price therefor, and consequently if the parties cannot agree between themselves as to its amount, there is nothing left but proceedings at law for its settlement in the same way that damages may be ascertained. In like manner a debt is implied in respect of such states of fact as the use and occupation of premises; board and lodging; work, labour, and services rendered; work, labour, and materials supplied; the payment of the principal debt by one of several co-sureties; or money wrongfully received. There are various classes of debts distinguished by the law, but of these the most practically important are: (*a*) debts of record, (*b*) specialty debts, and (*c*) simple debts. Each of these kinds may also take the form and nature of a *preferential debt*, as in the case of a debt in respect of which the

creditor has a privileged character, as where the creditor is the state; or as in the case of a debt the *nature* of which clothes it with a privilege—a debt in respect of funeral expenses for example. Preferential debts are discussed elsewhere in the articles to which they are respectively appropriate—BANKRUPTCY; EXECUTORS; LANDLORD AND TENANT, &c.

A *debt of record* exists where the creditor is in a position to enforce a judgment of a court of record for an ascertained sum against his debtor, who would be called the judgment debtor. The advantages of a debt in this form are many and obvious. The creditor may, for example, at any time levy an execution against the goods of his debtor in order to obtain payment, may proceed for his committal to prison, or may proceed in bankruptcy. Moreover, the debt is final, and cannot be disputed by the debtor. A *specialty debt* is one whereby a sum of money becomes, or is acknowledged to be, due by deed or instrument under seal; a *simple debt* is one other than a debt of record or a specialty debt, and is created and evidenced either by writing not under seal, by words, or by acts, circumstances, and conduct. There at one time existed a priority of a specialty debt over a simple debt, but this advantage of the specialty debt has now been practically abolished. The advantages now possessed by the specialty debt over the simple are: first, that no consideration is needed to support a specialty debt, whilst a simple one cannot be recovered if it is not based upon a good consideration; and secondly, that a specialty debt is available for twenty years before a right of action thereon is barred by the statutes of limitation, the simple debt being barred in six years.

Generally.—As soon as a debt becomes due, it is the duty of the debtor to seek out the creditor and pay it; the latter is under no obligation to make any demand for its payment as a condition precedent to bringing an action for its recovery. But if the creditor is out of England, the debtor is relieved from the duty of searching for him. If a friend of the debtor voluntarily pays the debt without the debtor's authority, the creditor may still sue the debtor therefor, as he is entitled to payment from his debtor and no one else. But the friend may save his friend's honour by honouring a bill of exchange for him; he should be careful, however, to make the payment *supra honour*. Reference should be made to the article on ACCORD and satisfaction, wherein it will be seen that the payment of a lesser sum of money in satisfaction and discharge of a greater undisputed debt, will not discharge the debtor from liability for the latter—not even if the creditor accepts it in such satisfaction and discharge, unless the acceptance is under seal. In some countries a creditor is entitled to present a bill of exchange to his debtor for his acceptance, and in case of a refusal to accept to sue on the dishonoured bill; this cannot be done in the United Kingdom. Because there are cross accounts between the parties, neither of them is thereby precluded from suing for the gross debt due to him from the other; it remains to the other to set up a counter claim to the action in respect of his own account. But persons in such a position can agree upon a balance, and the one to whom it is due can sue upon it as an ACCOUNT STATED (*q.v.*). When about to pay his debt, the debtor must tender to the creditor the exact amount thereof in current coin of the realm, and without more of each class of coin than the amount the law has constituted as a limit for TENDER (*q.v.*); notes of the Bank of England are a valid tender

in England, but not elsewhere. *See* also ACTION; BOOK-DEBTS; EXECUTION; JUDGMENT.

DEBT COLLECTION.—This is a subject of practical interest to every man of business. Though in some classes of business cash transactions are generally the invariable rule and in other classes all debts are paid almost automatically, there yet remains a great and increasing class of business in which the collection of debts is a serious and perplexing difficulty. And there are many different methods, if such they can be called, in which the difficulty is dealt with. The most generally adopted method is that of spasmodic and irregular attempts at getting in the outstanding debts; this is perhaps the least satisfactory of any of the methods, but it has the advantage of forcing upon the business man concerned the absolute necessity for a change therefrom and the adoption of a settled practical policy in its stead. Another method is the careful and regular delegation of the collection of the debts to a professional collector, and thereafter acting upon the idea that nothing further is required than the unconcerned receipt of whatever the collector is pleased to remit: but this method is a stage nearer an effective method than the first. The other methods are generally modifications and variations of the two we have already adverted to. Some business men make a rule never to proceed to an action at law, supporting their attitude by perpetual repetition of the old saw concerning the throwing of good money after bad: this, in plain English, is an ignorant and irrational position to take up. Others will proceed to law, but will stop short at a judgment, boasting most virtuously to all with whom they come into contact that they have never yet "sold any man's home up": this position is little better, if any, than the former. Others will even proceed to an execution, but will go no further; avoiding attempts at the bankruptcy or committal of the debtor on the ground of expense or lack of time. In none of these cases is the business man doing his duty either to himself, his business, to the commercial world generally, or even to his debtors. He is not truly a business man who, though capable at bargains and at making profits on the face of his transactions, is heedless of the necessity for crystallising his efforts and gathering in the fruits thereof. There are three causes one or more of which are given to the court by almost every bankrupt, and it would be difficult to say which one of them most frequently appears and which one most really accelerates the pace to the bankruptcy court. They are speculation, usurious interest, and bad debts. It is the latter that must here be emphasised as something to be avoided; it is as ruinous a factor in a business as is either of the others in business or private life. And apart from this consideration, the man of business owes it to the commercial system of which he is a part that credit, so widespread and necessary, should not be shaken at its foundations by the malpractices of the irresponsible and the reckless. He should adopt the rule, as an essential part of his general principle of business, that a debtor be made to pay, and to suffer the consequences of any default. Of course, thus blankly stated, the rule appears harsh and perhaps extreme, but in these terms it should undoubtedly be accepted as a principle. Individual cases and special circumstances can and should always afford an opportunity for departure from its strict enforcement in practice; in principle, however, the rule must stand. In order to facilitate the collection of his debts, the business man should be careful to clearly define the credit which he gives to each person with whom he deals, and in the rendering of accounts and statements the arrangements made for credit should be closely adhered to. The monthly or quarterly statements should go out with unfailing regularity; at certain fixed periods thereafter there should also be sent out further reminders in cases where the accounts have not been paid. Then, if still unpaid, special requests for immediate payment should follow. The times for these various things to be done and the form they should take must be determined by the nature of

the business and the credit given, and the class of debtors dealt with. Beyond emphasising the necessity for a regular and systematic method, nothing more detailed can be here laid down. But assuming that all amicable means have been tried whereby to obtain payment and only failure has resulted, the creditor is bound to call in the aid of the law. If the nature of the business is such that there is an invariable and regular accumulation of a large number of overdue accounts, most of which are less than £10 in amount, it will be undoubtedly a wise course for the creditor to keep a special clerk whose duties will include the collection, through the court, of all debts not exceeding that sum. Many a young man can be obtained for such a post who has had a practical experience in a solicitor's office of county court work. If the work of collection is not sufficient to occupy the whole of his time, there should be no difficulty in finding other work in the office to which he can adapt himself. If however it is determined to utilise a clerk already in the office, but who has not had any such county court experience, he can, by reference to such a work as this together with an increasing experience, develop very speedily into a competent and efficient county court "practitioner." Moreover his employer's solicitor will at all times be glad to advise and assist him, for most solicitors of good commercial practice, who do not lay themselves out for county court work, are only too pleased to find their clients anxious to relieve them of the work of debt collection.

But if the creditor has no wish to do the work in his own office, he had better retain a solicitor for the purpose. And here comes his opportunity to assist the inevitable young solicitor acquaintance who is endeavouring to build up a practice. Such a solicitor is glad to do this class of work, not only for the direct remuneration therefor, but chiefly because it brings him in touch with a new and substantial client, and also affords him openings in other directions. It is much better for the creditor who has a number of accounts of the class to which we are referring to employ the young and energetic solicitor who is working for his future; the old established men and firms do not and cannot, as a rule, give this class of work the attention it should properly receive. The terms upon which any respectable and responsible solicitor would undertake the work are generally that the creditor prepays all the out-of-pocket expenses (such as court fees), and pays him a commission of 5 per cent. upon the amount of the debts he recovers. No more than this should be paid, unless in exceptional cases. But having placed the accounts in the hands of the solicitor, the creditor should make it an inflexible rule that the solicitor should render him a statement at least every month, and at the same time pay over all monies in his hands.

It is useless to give debts to ordinary so-called debt-collectors to collect; they can do no more than the creditor himself, and in the end their charges are considerably higher than those of a solicitor, and they have much less satisfactory results to show. For one thing, they generally expect to make their profit out of the fees they charge the *debtors* for a leniency at the creditor's expense. If a debtor is proceeded against by a small debt-collector he may rest assured that no further steps will be taken against him so long as he pays a small fee now and then to the "collector." As to accountants, the creditor will find that the responsible and respectable practitioners will decline the collection of debts as not being within their province. He is therefore very properly thrown back upon the solicitor if he wishes his debts collected by an agent.

But whether the debts are being collected by himself in his own office or by his solicitor, the creditor should certainly know something of the principles and methods of effective debt collection. A debt may be said to belong to one of five classes:—(1) When it does not exceed in amount the sum of £2; (2) The amount whereof exceeds £2, but does not exceed £10; (3) When it exceeds £10, but does not exceed £20; (4) Exceeding £20, but not exceeding £50; (5) Where it

exceeds £50. In proceeding to recover a debt, regard should be had to which of these classes it belongs. If it exceeds £100, proceedings cannot be taken for its recovery in the County Court except by consent of the debtor, or by the creditor absolutely abandoning such part thereof as exceeds that sum. In the High Court, however, a writ may be issued for any debt however small it may be, however large; and this is also generally the case in some of the old local courts still existing in a few of the most important provincial towns, such as the Mayor's Court in London and the Tolzey Court of Bristol. But confining our attention for the present to the High Court, it should be noticed that for all practical purposes the minimum limit of High Court procedure is £20, as no solicitor's costs would be allowed in respect of a claim arising out of contract for an amount below that sum. In fact, whenever the facts of the case are such that the debtor would probably be able to obtain leave to defend the action in the High Court under Order XIV. (*see* ACTION), it will be safer to proceed in the County Court in respect of a claim for a less sum than £100; for as a general rule the creditor will not obtain High Court solicitor's costs in a High Court action for a claim between £20 and £50 in amount, and which is within the jurisdiction of the County Court, unless he can obtain judgment therefor under Order XIV. within twenty-one days from the service of the writ. He will only recover County Court costs in respect of his High Court action, and so may lose a considerable part of the costs of his solicitor. As to classes (2), (3), and (4), the costs which will be allowed in a County Court on a claim in class (3) are heavier than those allowed in class (2), and in its turn the costs incidental to class (4) are higher than those belonging to class (3). In class (1) the creditor will be able to recover only the court fees he has paid and the costs of his witnesses.

Upon recovering a judgment against his debtor in the High Court, the creditor is entitled to recover the full amount thereof forthwith, and the court has no power to force him to accept payment by instalments. This is the rule in the High Court whatever the amount of the judgment may be; but in the County Court the judgment creditor is to some extent in the hands of the court in this regard. If the debtor appears, and the amount of the claim, exclusive of costs, does not exceed £20, the judge or registrar may order the judgment and costs to be paid by instalments. But should the amount, exclusive of costs, exceed £20, the judge or registrar can make such an order only by the consent of the creditor. The latter has, therefore, the option of taking instalments or maintaining his right to an order for the immediate payment of the whole amount.

But it is usually after he has obtained judgment that the creditor's troubles really begin. As a rule he at once issues an execution against the judgment debtor's goods, but the fruit of this expense is very frequently only a return from the sheriff or bailiff that he has sold the debtor's goods but they have only yielded a fraction of the amount of the judgment, or that the debtor has no goods at all of his own, or that the landlord claims a lien thereon for rent in arrear, or that he has found them already in the custody of the law in respect of an execution which has unfortunately forestalled our creditor's, or that they belong to the debtor's wife, or that they are subject to a bill of sale, or that they are the property of some third party or other. If the execution is issued in the High Court, the official in charge of the process is the sheriff's officer, but if it is a County Court execution the corresponding official is the bailiff. Upon receiving the Return, the best course will be for the creditor to interview the sheriff's officer or bailiff and obtain from him all possible particulars; an observant official will very possibly have noticed something which may be useful to the judgment creditor as a hint for his future proceedings. If the official is satisfied that there are no other goods belonging to the judgment debtor, there will thus be an end to the creditor's execution. If, however, the execution has been rendered abortive by

the presence of a prior execution, it will be worth while for the creditor to find out (*a*) the name of the creditor to the prior execution, and (*b*) the date upon which that execution was originally levied. Having found this out, he may discover (*a*) that the name is the same as that of the debtor, or of his wife, or some other relative; (*b*) that the prior execution had been originally levied some considerable time before but had been withdrawn, for the judgment debtor's convenience, with a power to re-enter at any time. The reasonable inference from such facts would be that the prior execution was merely a collusive one arranged with a friend of the debtor for the purpose of preventing the sale of the latter's goods by his *bonâ fide* creditors. And if inquiries should support this inference, it is highly probable that should our creditor proceed to force the prior execution creditor to sell the goods, the former will obtain a very satisfactory settlement of his claim. If it is a claim by the landlord for arrears of rent that prevents an execution, the creditor should proceed on the foregoing lines and be particularly careful to see that the landlord claims no more rent than he is entitled to by statute (*see* DISTRESS).

The debtor's wife is undoubtedly the most persistent and troublesome obstacle with which the creditor has to contend. It is a very usual occurrence for this lady to claim all the goods apparently belonging to the debtor and upon which the creditor has levied the execution. Such a claim should always be rigidly investigated, and if, as a result thereof, the creditor is not satisfied with the *bonâ fides* thereof, he should persist in his execution, and so force her to substantiate her claim in a court of law by means of an INTERPLEADER action. Before the law allows her to do this she would be required to find security for the debt and costs claimed by the creditor to the extent of the value of the goods she claims. And this rule applies generally to all persons who claim to own goods in the possession of a debtor whereon an execution has been levied; and by this means the *bonâ fide* nature of the claim is very effectively tested, for if the claimant should not succeed in the interpleader proceedings, the security is available to the creditor for repayment of his costs in connection therewith. In investigating the claim of the wife or any other third party claimant, special attention should be paid to the source from which the claimant obtained the goods, the consideration given therefor, and the evidence of the transaction in his possession. If the goods were sold by the debtor himself to the claimant, and not removed from the premises of the former to those of the claimant, and the receipt or other document of title is not registered as a bill of sale, the transaction will be invalid as against the creditor, and he can sell the goods in face of the claimant's opposition (*see* DEFEASANCE). Again, the goods may have been bought by the wife with her husband's money under such circumstances as to show that he was the real purchaser thereof; or they may have been settled upon her by the husband without good consideration, a settlement which would be invalid in case of a subsequent bankruptcy of the husband within a certain period. Or the goods may have been sold to some other creditor in consideration of some past debt and within such a period as to be invalid as a FRAUDULENT PREFERENCE in the event of a subsequent bankruptcy. If the goods are found to be subject to a bill of sale, a careful inquiry should be made into the circumstances thereof—whether the consideration actually passed, whether the instalments have been regularly paid thereunder, and so forth. But a bill of sale can always be discovered before the levy of the execution by a search at the Central Office, and it would be wise to consider its merits before proceeding to levy.

If the judgment amounts to £50 or more, the creditor can always proceed to make his debtor a bankrupt; and often in the course of his progress towards that goal, a debtor, whose refusal to satisfy a judgment has been caused more by unwillingness than by inability, may be forced by fear of financial disgrace to meet

and discharge his liability. Before the creditor can present a bankruptcy petition he will be required to prove an act of bankruptcy on the part of the debtor. There are a number of ways in which a debtor may commit an ACT OF BANKRUPTCY (*q.v.*), amongst them being the suffering under certain conditions of an execution against his goods. But if none can be proved the creditor may serve his debtor with a bankruptcy notice, non-compliance by the debtor with which will constitute an act of bankruptcy. But once he can prove the foregoing, he will be at liberty to present a petition. This is the immediate forerunner of bankruptcy, and if the debtor has any means at all, or the least prospect of any, he will do his best to either pay or make some satisfactory arrangement with his creditor.

But there are other proceedings available to the creditor without regard to the amount of his judgment debt, and equally so in the High Courts and the County Court. One of the most effective of these, and perhaps the one which should be first instituted, is the oral examination of the debtor as to his means. The debtor can be summoned before the court for this purpose, and the creditor may at the appointed time and place cross-examine him as to his property, business transactions, his debtors, banking account, means of livelihood, and everything which may lead up to some disclosure of means to pay his debts. His books of account must also be then produced, and may be examined by the creditor. With the knowledge thus acquired the creditor may know how to shape his future course. If the case is absolutely hopeless, his best course will be to strike the debt out of his books as a bad one; if there is a prospect of future payment, he should suspend proceedings until the more propitious time arrives; but if he has acquired some practical and valuable information, he should act thereon at once. Should there be a credit to the debtor's account at his bank, or debts due to him from others, his proper course will be an ATTACHMENT thereof by way of garnishee. Is the debtor a partner, he can apply for a receiver of the partnership share. Has the debtor any land, he will proceed against that, and if it is already mortgaged he can obtain equitable execution thereon. If the debtor has had sufficient money since the date of the judgment available for its payment, proceedings should be at once taken for his committal under the DEBTORS ACT unless and until he pays. And a like committal would be the most effective proceeding in case the debtor has a regular income; but before, and with a view to applying therefor, the creditor should obtain an order from the court for payment of the judgment by such instalments as he or the court believes the debtor can reasonably pay. The proportion of debtors who suffer a committal to prison or a bankruptcy adjudication rather than pay their debts when they possess the means to do so, may be taken as extremely small *See* also COUNTY COURT; EXECUTION.

DEBTORS ACT and COMMITMENT FOR DEBT.—By the Debtors Act of 1868 it was enacted that, with certain exceptions therein mentioned, no person should be arrested or imprisoned for making default in payment of money. Amongst the exceptions are: penalties, other than those in respect of contracts; sums recoverable summarily before magistrates; default by trustees and others in a similar position who have been ordered by a court to pay over monies in their possession or under their control; defaults by solicitors in payment of costs for misconduct, or of monies ordered to be paid by them in their character of officers of the court; defaults of payments out of salary or income under bankruptcy orders. But no one may be imprisoned in respect of these excepted cases for a longer term than one year.

But the most important and practical exception is that contained in section 5, for thereunder the courts, and particularly the county courts, are

constantly committing debtors to prison for default in payment of debts. By that section any court may commit to prison for a term not exceeding six weeks, or until payment of the sum due, any person who makes default in payment of any debt or instalment of any debt due from him under a judgment of that or any other competent court. But this jurisdiction to commit can only be exercised subject to certain restrictions: (*a*) That it is exercised only by a judge or his deputy, and by an order made in open court and showing on its face the ground on which it is issued; (*b*) that it is exercised only as respects a judgment of a county court by a county court judge or his deputy. There is also the following further most important restriction which limits the exercise of this jurisdiction: (*c*) That it shall be exercised only where it is proved *to the satisfaction of the court* that the person making default *either has, or has had since the date of the order or judgment, the means to pay* the sum in respect of which he has made default, *and has refused or neglected, or refuses or neglects, to pay* the same.

Proof of the means to pay of the person making default may be given in such manner as the court thinks just; and for the purposes of such proof the debtor and any witnesses may be summoned, and subpœnaed, and examined on oath. With a view to a subsequent order for committal, the court may direct any debt due from any person in pursuance of any order or judgment to be paid by instalments, and may from time to time rescind or vary such order. Imprisonment under this Act does not operate as a satisfaction or extinguishment of any debt or demand or cause of action, nor does it deprive any person of any right to take out execution against the lands, goods, or chattels of the person imprisoned, in the same manner as if the imprisonment had not taken place. A person imprisoned will be discharged upon a proper certificate that he has satisfied the debt or instalment of a debt in respect of which he was imprisoned, together with any costs.

Arrest of defendant about to quit England.—A plaintiff in an action for debt of £50 or upwards in the High Court may at any time before final judgment obtain an order from a judge that the defendant be arrested and imprisoned for a period not exceeding six months, unless and until he has sooner given security, not exceeding the amount claimed in the action, that he will not go out of England without the leave of the court. But to do this the plaintiff will be required to satisfy the judge on oath that the action is a good one, that the amount claimed therein is £50 or more, that there is probable cause for believing that the defendant is about to quit England unless he is apprehended, and that the absence of the defendant from England will materially prejudice the plaintiff in the prosecution of his action.

To obtain the committal of a debtor, the plaintiff should generally proceed in a County Court. If his judgment is one of the High Court he should have it transferred to the County Court by filing an office copy of the High Court judgment and an affidavit that it is still unpaid. The next step is to issue a judgment summons, which should be done within four months from the date of the judgment, or from the date on which the last payment into court, if any, has been made; or if no payment into court has been made, then from the date upon which default was made; or from the date of an abortive or not sufficiently satisfactory execution against the debtor's goods

If the judgment summons is not issued within either of these periods leave must be first obtained by filing an affidavit, stating the debtor's place of residence or business, his trade or profession (if any), and any facts known to the deponent, showing the means which the debtor has, or since the date of the judgment or order has had, to pay or to have paid the debt or instalments. This affidavit should show facts sufficient to satisfy the judge that the debtor has the means of obeying, or could have obeyed the judgment or the order of the court. Every judgment summons should be issued not less than ten clear days, and served not less than five clear days, before the day on which the judgment debtor is required to appear before the court; failure in either of these respects will invalidate the summons unless when the summons was issued the court, having reason to believe that the debtor was removing from his dwelling or place of business or was avoiding service, had varied the rule as to time of service. But in the latter event the court, on the hearing of the summons, will require fresh evidence of those facts which caused the variation of the rule. At the hearing, the court will hear evidence from both of the parties as to the means or want of means of the debtor; and in this regard it is important to note that before making an order for committal, it is necessary for the court to be satisfied that the debtor *has then* or *has had* the means of payment *since the date of the judgment or order*. It is not sufficient to show that the debtor was in a position to pay the money *before* that date. If the judgment creditor or the debtor does not reside in the district of the court before which the summons is to be heard, he may send an affidavit to the registrar of the court instead of attending himself; but a debtor cannot do this when subpœnaed as well as summoned, for he is then bound to attend the court and be examined by the creditor as to his means. If the creditor is not in a position to give much evidence himself as to his debtor's means, he should, when applying for the judgment summons, obtain a notice requiring the attendance of the debtor at the hearing of the summons. Upon service of these and payment to the debtor at the time of service of the sum of one shilling, or sufficient to bring him to the court, the creditor can obtain process against the debtor should the latter fail to attend. This course enables a creditor to force a debtor to himself disclose his own means of livelihood. The above-mentioned affidavit, when used, should contain all the facts upon which the deponent relies; if by the creditor it should show, so far as he can, the means to pay possessed by the debtor, and if by the debtor it is available to prove his inability to pay either at the time of the summons or during the whole period since the judgment or order. A debtor's affidavit should go fully and candidly into his whole financial position; he should state the source of his income and the amount, the number of members of his family, and any extra expense he may have been put to through misfortune, such as illness. Upon hearing all the facts, the judge may either make or refuse to make any order at all. If he makes an order it may take the form of one for payment of instalments, or one for the commitment to prison of the debtor. Where such an order as the latter is made, the judgment may direct the warrant for commitment to lie in the court office for a specified time, say a month, or during such time as the debtor shall regularly pay certain specified instalments; either of such directions as these would give the debtor a still further opportunity to pay his debt and escape imprisonment.

The judge cannot make an order for commitment if the debtor upon the hearing of the summons proves that a receiving order in bankruptcy has been made against him, or that he has been adjudicated a bankrupt and the debt was provable in the bankruptcy, or that certain resolutions in bankruptcy have been duly registered, or that an order has been made for the administration of his estate in the county courts. If any of these last-mentioned events happen after the order for commitment has been made, the warrant for imprisonment cannot issue, and if the debtor is already imprisoned he is entitled to his discharge. The debtor is also entitled to immediate discharge directly he pays the requisite sum to the bailiff who arrests him, or to the gaoler. He may also be discharged upon written request to that effect by the creditor, and duly lodged with the registrar of the court. If the debtor appears at the court on the day of hearing, but the creditor fails to do so, the judge may award costs to the debtor. *See* DEBT COLLECTION; COUNTY COURT; FRAUDULENT DEBTORS.

DEBTORS' LEDGER.—This is one of the three or four books which are absolutely essential to a trader. In it are opened separate accounts for all persons and firms to whom he gives credit, each account being headed with the name and address of the person or firm to whom it is appropriated, and to this heading may conveniently be added a note of the general terms of credit given in the particular case. The items of the ledger account are taken from the journal and each is "posted," to use the technical expression, on its appropriate side of the account. Thus an entry of a sale or other debit would be posted on the left-hand or Dr. side, whilst that of a payment or other credit would find its place on the right-hand or Cr. side. It is not the general practice to enter in the ledger the details of the debit or credit appearing in the journal, it being usually sufficient to post the transaction in such words as "To goods," or "By cash," as the case may be. The date of the transaction as it appears in the journal must of course be included in the ledger entry, and in order to expedite reference the folio of the journal entry should always appear. The ledgers on sale at stationers' are invariably ruled with all these necessary columns. At certain regular intervals—monthly, quarterly, or otherwise, according to the trader's convenience—the balances of all the ledger accounts should be extracted and these balances copied out in a balance-book; but at least every quarter or half-year the accounts should be properly balanced and ruled off, and the balances carried down. All entries should be carefully checked as and when made, and great care should be taken that the balances are accurately calculated. To facilitate the agreement of the balance, it is wise to limit carefully the number of the ledger entries by comprising as much as possible in those aggregate sums in the journal which are posted in the ledger. In book-keeping, accuracy and neatness invariably, almost of necessity, go hand in hand, and accordingly it may be worth while to remind the reader that the ledger should be kept with the greatest regard to its appearance. There should be no mistakes and no erasure by scratching out; if a mistake should occur, the proper method is to neatly draw the pen through it so that its nature can always be clearly seen, and to make a fresh entry in respect of the correction. The ruling should be done with red ink. The ledger must have an index, which need contain only the titles of the accounts and a reference to the page. Below are a specimen account of a debtors' ledger and an example from the

balance-book, which latter could be ruled for monthly balances if desired. *See* also the articles in the Supplementary Volumes.

Dr. *George Graham, Esq., 15 Piccadilly, W.* Cr.

1910.		Journal folio.				1910.		Journal folio.			
25 March	To balance L.F. /95.		59	3	7	2 April	By cash	81	50	0	0
2 April	To goods	81	11	8	6	1 May	,, package returned .	100		12	0
9 ,,	To packages . . .	87		12	0		Balance carried down .		39	16	1
4 May	To goods	115	9	4	0						
9 June	To do.	211	10	0	0						
			90	8	1				90	8	1
	To balance brought down . . .		39	16	1						

Extract from a Balance-Book.

Ledger Folio.	Name.	Address.	Lady-Day.			Midsummer.			Michaelmas.			Xmas.		
DI/48	Graham, Geo.	15 Piccadilly.	59	3	7	39	16	1						

DECEIT in law is the wilful or fraudulent misrepresentation by which one man deceives another who has no means of detecting the fraud, to the injury and damage of the latter. It should be noticed that there must be an actual misrepresentation or an untrue statement of fact to constitute a right of action; that the person who makes the misrepresentation does so wilfully or fraudulently; that the person bringing the action relied upon the misrepresentation and was deceived thereby; that he had no means of detecting the fraud, and that he has suffered damage therefrom. The action of deceit is a common-law action for damages, and the person prejudiced has a right to object to the enforcement of a contract induced by the deceit; he may even obtain the rescission of such a contract. When two or more persons unite in a deceit upon another they may be indicted for a conspiracy. An honest belief in the truth of the misrepresentation is a good defence to an action for deceit at common law; and so it would be that the facts in respect to which the misrepresentation was made were not material to, or were not a determining factor in, the transaction in which the complainant was defrauded; or that the misrepresentation was only the mere expression of an opinion.

An action of deceit was, prior to the Directors' Liability Act of 1890 [*see* PROSPECTUS], very frequently brought against directors of public companies in respect of mis-statements contained in prospectuses. It is now, however, usual for any person deceived by a prospectus to avail himself of the

remedies provided by the Companies Act, 1908, which repealed and replaced the Act of 1890. The action of deceit is also available against those who wilfully or negligently give untrue statements as to the position, character, or responsibility of some person enquired about. But the statement must be in writing in order to support an action for damages. *See* FRAUD.

DECK CARGO.—It is a general principle of the common law that the deck is *primâ facie* an improper place whereon to stow cargo or any part of it. Consistent with this principle the Legislature has made very stringent provisions restricting and limiting the space for the stowage of cargo upon deck, making it necessary for the master of a ship to enter the measurement of the deck cargo in the log, and report his arrival at port to the customs authorities, so that the officers may at once board and inspect and measure it, and see that none of the statutory regulations have been infringed. Unless a shipper has an express contract to that effect with the shipowner, the latter is not liable to the former for any loss or damage done to goods carried on deck. But if there is a general and well-known custom at the port of shipment to carry goods of the particular class on deck, the shipowner would be then liable. And in like manner the underwriter of an ordinary policy of marine insurance would not be generally liable for loss or damage to deck cargo. Unless the charter-party expressly gives him leave, a charterer of a ship has no right to stow goods on the deck.

DEED.—A deed is a writing, printing, lithograph, or drawing, which provides for the performance, by some person named therein, of some act in the law (such as the conveyance of property or the making of a contract), and which is testified by being *sealed* with the seal of the person to be bound thereby, *and* is *delivered* to the person intended to benefit thereunder. Deeds are of two kinds, indented and poll. A deed indented is called an indenture, and has a waving line cut teeth-fashion on one of the edges of the material upon which it is written, usually the top edge; and when the deed consists of more sheets than one, on the first sheet only. The term indenture implies that the deed is of two parts, that is, two parts or copies exactly alike, and that the two parts were divided by the line in order to afford additional means of authentication; but except in the cases of leases, marriage settlements, partnership deeds, and some few others, there are seldom more parts than one actually executed. In the case of a lease, the second part is called the counterpart and is retained by the lessor. The term indenture has now no further signification than that the document to which it is applied is a deed of two or more parties. The usual practice is to commence such a deed with the words "This Indenture," or "An Indenture"; but to ascertain with certainty whether a particular document is in fact a deed, its purport and the mode of its execution should be regarded, for if it has been "sealed and delivered" it will be a deed; if not, it will be merely an instrument or agreement "under hand," whether commenced with the words "This Indenture" or not. A deed poll is cut even, or polled at the edges, and is usually of one part only, that is, the deed of one party, or of several parties of the same part. The form commences in the mode of a declaration, "Know all men by these presents that," or "To all to whom these presents shall come." There is no necessity, in practice, to indent a deed.

Previous to its execution the deed should be read, if any of the parties require it. The modern mode of executing deeds is by signing, sealing, and

delivery; sealing is absolutely necessary, and has been in use from the earliest times as a mode of authentication. At present the seal is no real security against fraud, for any impression by a seal, or even by the momentary touch of a finger upon wax or other substance, or upon any imitation of a seal which is capable of adhesion to the document, such as a wafer, is sufficient; indeed the seal or wafer is generally affixed by the clerk who prepares the deed. An individual should also sign his name opposite the seal and then deliver the deed; but in the case of corporations or incorporated companies, signing is naturally not requisite, nor is any other delivery than such as the sealing with the common seal itself imports. When executing a deed an individual should say, "I deliver this as my act and deed," but any less formal mode by which the party signifies his intention to deliver it will be sufficient. The delivery means that the person whose act the instrument is to be, and who is to be bound by it, delivers it to the person intended to benefit thereunder, or to some person acting for him, thereby declaring that the act is complete.

A deed may also be delivered as an *escrow*, i.e. to a third person, not a party to the deed, to keep as a mere writing until something is done by the grantee: when that thing is done the deed becomes effectual. Such a course would be adopted where the vendor of a house executes the conveyance thereof, and hands it over to a friend to deliver to the purchaser as soon as the latter pays the purchase price. A deed takes effect from the delivery, and not from the date, and therefore if it has no date, or an impossible date, the delivery ascertains the date from which it is to take effect. Evidence is admissible also of delivery on a date different from the date written. Enrolment and registration are rendered necessary in some cases by statutory enactment, and certain stamp duties are imposed upon every description of deeds, the absence of which prevents them from being admissible in evidence. An indenture usually ends with the following words, "In witness whereof the said parties to these presents have hereunto set their hands and seals the day and year first before written." If an incorporated company is a party to the indenture the words would be modified so as to discriminate the execution of the company from that of the other parties, and similar words to the following would be introduced: "and the said company hath hereunto affixed its common seal." The execution is also usually attested by one or two witnesses, their names and addresses being signed below such a clause as the following: "Signed, sealed, and delivered by the said A. B. in the presence of."

After execution, a deed may become void by erasure, interlineation, or other alteration in any material part, and inconsistent with the purposes of the deed; but generally speaking, the alterations will be presumed to have been made before the execution, if nothing appear to the contrary, or there is no cause to suspect that it has been done in a clandestine manner. A deed may be destroyed or cancelled, but the destruction or cancellation will not revest in the grantor the thing granted, though all personal engagements established by the deed between the parties will be put an end to. Consequently if a deed has transferred property from one person to another, the property continues transferred even if the deed is no longer in existence, wherefore to revest the property a deed of reassignment, reconveyance, or release, will be necessary.

Know all Men by these presents that I George Henry Roper of 16 Suffolk Square Croydon in the County of Surrey Gentleman in consideration of natural love and affection and for divers other good causes and considerations **do hereby absolutely give** and make over unto and to my wife Mary Edith Roper of 16 Suffolk Square aforesaid **All and singular** the goods and chattels set out in the schedule hereto appended **To hold** the same unto the said Mary Edith Roper for her own absolute use and benefit and as her separate estate and property free from my control interference engagements and liabilities **In witness** whereof I have hereunto set my hand and seal this twenty ninth day of May One thousand nine hundred and ten

The Schedule

Broadwood Grand Piano No. 25761 Queen Anne Chest of Drawers Drawing room suite in mahogany and green satin

(comprising settee 2 armchairs and 4 occasional chairs) Buhl

5 feet cabinet Empire Clock in bronze and gilt by Latour

Signed sealed and delivered
by the said George Henry Roper
in the presence of

Geo H Roper L.S.

Arthur Haselwood
15 Greyhound Place
Croydon
Solicitor's Clerk

An action upon a deed may be brought within twenty years, or twelve years for a mortgage debt; upon an agreement not under seal, a remedy by action is barred after six years. Amongst the instruments which should be in the form of a deed are: conveyances of real estate; leases for a term of three or more years; the release of a debt where there is no consideration therefor except in the case of a bill of exchange or promissory note, the liability whereon may be discharged according to mercantile custom, by express renunciation in writing by the holder of his claim, or according to the Bills of Exchange Act by delivering up the bill or note to the holder or maker; and assignments of leases. As a general rule every written contract, in respect of which there is no valuable consideration, must take the shape of a deed in order to have validity. Thus it would be necessary to have a deed to effect a gift of property which is and continues in the possession of the donor, or a deed to grant an annuity to a woman in consideration of her past cohabitation with the grantor.

To destroy, cancel, obliterate, or conceal, for any fraudulent purpose, any deed which forms the title, or part of the title to land, is a felony punishable by penal servitude from three to five years, or imprisonment, with or without hard labour, for not more than two years. It is a misdemeanour, punishable by imprisonment for two years with hard labour, for a seller or mortgagor of land, chattels, real or personal, or a chose in action, to fraudulently conceal from a purchaser or mortgagee any deed material to the title; and the person prejudiced may also sue for damages. It is a felony to induce any one, by violence or threats, to execute a deed; a misdemeanour to obtain the execution of a deed by false pretences; a felony to forge or alter, utter, dispose of, or put off a deed, knowing it to be forged, with intent to defraud; and a felony to acknowledge a deed, without lawful authority or excuse, in the name of another.

DEEDS OF ARRANGEMENT.—It is often the case that an embarrassed debtor is anxious to effect an arrangement with his creditors without a resort to the bankruptcy court. There is no reason in law why he should not do so if his creditors are agreeable—indeed the law itself considers a *bonâ fide* private arrangement to be a most proper proceeding. So much has the law taken private arrangements under its especial protection, as to strain in their favour the rule that a debt cannot be satisfied by the payment of a smaller sum. It has been held that where *two or more* creditors have each agreed to take a certain sum in satisfaction of a debt larger in amount, the debtor is thereby discharged and released from the payment of the balance; not because he has paid the agreed smaller sum, but because the particular *several* creditors have agreed between themselves to exercise a certain forbearance. When a debtor has entered into a private deed of arrangement with his creditors, it has been in order to either make a composition with them by payment of a certain part in satisfaction of the whole, or to pay the whole by certain instalments or in an extended time, instead of at the times his debts properly become due. There are three kinds of these deeds: (1) Deeds of assignment for the benefit of creditors; (2) deeds of composition; and (3) inspectorship deeds.

To both debtor and creditors some very substantial advantages may be

gained by adopting this method of private arrangement instead of seeking the aid of the bankruptcy court. For one thing the bankruptcy itself is avoided. And by avoiding this, the debtor and creditors are in a position to realise the debtor's estate strictly in accordance with the terms of their private arrangement, to save time and expense, and to avoid much publicity and official investigation and interference. Of the above three deeds, the deed of assignment is one by which the debtor assigns his property to a trustee whose duty it is to realise the estate, divide the proceeds *pro rata* amongst the creditors, and hand over the surplus (if any) to the debtor. A form of this deed, which is the one in most general use, is set out below, and a perusal thereof will show the detailed nature of its provisions, and will at the same time indicate the real effect of the assignment upon the debtor and his creditors. A deed of composition is much simpler, and merely provides for the payment of a composition and for the release of the debtor. A deed of inspectorship is of a more complicated nature, providing as it does for the debtor carrying on his business under the inspection of a committee of his creditors until the agreed composition has been paid.

Some legal points.—When a debtor intends to privately compound with his creditors, his first step is usually to call a meeting of them to discuss the position. This should be done through his solicitor, or a public accountant experienced in such matters. By thus availing himself of professional assistance, the debtor obtains the services of an advocate to stand between himself and his creditors at the meeting. He also has the advantage of the personal influence usually exercised by a respectable solicitor or accountant amongst the local business men or in a certain trade. And besides these advantages, the circular letter calling the meeting will be so worded as not to be in itself an act of bankruptcy. This it would be if it were in effect or, in so many words, a declaration by the debtor of inability to pay his debts as and when they become due. At the meeting the creditors will decide whether the debtor's proposals are to be accepted or not. When the deed is executed, the debtor has thereby committed an act of bankruptcy, and he may be made a bankrupt in respect thereof at any time within three months from its date, even if it has not been registered and is thereby of no real effect. Only creditors who have not assented to it can take these bankruptcy proceedings; the others are bound by it so long as the debtor fulfils his part of the arrangement. If within the three months the debtor is made a bankrupt, the deed will be void and the property comprised in it will be subject to the bankruptcy law as if it had not been made. After the three months have expired it is no longer available to his creditors as an act of bankruptcy.

Registration.—By the Deeds of Arrangement Act, 1887, it is provided that every deed of arrangement is to be registered within seven clear days after the execution thereof by the debtor or any creditor. Non-registration will avoid the deed, but in case of an omission to register, or of any other non-compliance with the requirements of the Act, due to inadvertence or to some cause beyond the control of the debtor and not imputable to any negligence on his part, the court will order registration or rectification of the deed. A deed of arrangement to which the Act applies includes any of the following instruments, whether under seal or not, made by, for, or in

respect of the affairs of a debtor for the benefit of his creditors generally otherwise than in bankruptcy proceedings: (*a*) An assignment of property; (*b*) a deed of or agreement for a composition; and in cases where creditors of a debtor obtain any control over his property or business: (*c*) a deed of inspectorship entered into for the purpose of carrying on or winding-up a business; (*d*) a letter of licence authorising the debtor or any other person to manage, carry on, realise, or dispose of a business, with a view to the payment of debts; and (*e*) any agreement or instrument entered into for the purpose of carrying on or winding-up the debtor's business, or authorising the debtor or any other person to manage, carry on, realise, or dispose of the debtor's business, with a view to the payment of his debts.

The office for registration is the bills of sale department of the central office of the Supreme Court, and office copies of any registered deed may be obtained therefrom by any person; any deed may also be inspected by any person, who may also take short extracts therefrom upon payment of one shilling. Registration is effected in the following manner: (1) A true copy of the deed, and of every schedule or inventory thereto annexed or therein referred to, must be presented for publishing within the specified time, together with two affidavits. One of these affidavits is required to verify the time of execution, or to contain a description of the residence and occupation of the debtor, and of the place or places where his business is carried on. The other affidavit must be made by the debtor, and should state the total estimated amount of property and liabilities included under the deed, the total amount of the composition (if any) payable thereunder, and the names and addresses of his creditors. (2) The deed cannot be registered unless it is duly stamped with the appropriate Inland Revenue duty, and also with a stamp denoting a duty at the rate of one shilling for every £100 of the sworn value of the property passing, or (where no property passes) the amount of composition payable under the deed. The fact of registration of a deed of arrangement is usually published, together with full particulars of the debtor, creditors, and property, in the commercial gazettes and the trade papers. If land is included in the property assigned, the deed must also be registered at the Land Registry.

The trustee under a deed of arrangement must, within thirty days of the 1st January, in every year, furnish to the Board of Trade an account of his receipts and payment according to a form which will be supplied to him by the Board. This account may be inspected at the Board of Trade offices by any creditor upon payment of a small fee, any irregularities in the winding-up of the debtor's estate being thus guarded against. *See* ACT of BANKRUPTCY; BANKRUPTCY.

Form of Deed of Assignment for benefit of Creditors.

THIS INDRE, made the day of 19—, **Between** A. B. of &c. (hereinafter called "the Debtor") of the first part, C. D. of &c., and E. F. of &c. (hereinafter called "the Trustees") of the second part, and the several persons, companies, and firms whose names and seals are hereunto subscribed and affixed, or who shall otherwise accede to these presents, being respectively Creditors of the Debtor (hereinafter called "the Creditors") of the third part: **Whereas it**

has been agreed between the Debtor and his Creditors that an arrangement shall be made such as is hereinafter expressed; And whereas the Debtor has furnished a statement of his affairs to the Trustees wherefrom it appears that his property consists of the particulars set forth in the first Schedule hereto: **And whereas** the names of the Creditors and of the amounts owing or claimed to be owing to them respectively are inserted, or intended to be inserted, in the second Schedule hereto. **Now this Indenture witnesseth** as follows:—

1. **In** consideration of the release hereinafter contained the Debtor as beneficial owner hereby assigns unto the Trustees All the personal property described in the first part of the first Schedule hereto. To hold the same unto the Trustees upon the trusts nevertheless and with and subject to the powers and provisions hereinafter declared and contained.

And it is hereby agreed and declared as follows:—

2. **The** Trustees shall forthwith sell, call in, and convert into money the premises hereby assigned, or at such future times and in such manner as to them shall seem fit, and shall, with and out of the proceeds of such sale, collection, and conversion in the first place, pay and retain all the costs and expenses of and incidental to the preparation and execution of these presents and the negotiations preparatory hereto, and all the costs and expenses of and incidental to the execution of the trusts and powers of these presents; And shall in the second place pay and discharge all claims entitled by law to be paid in full in priority to other debts under the Laws relating to Bankruptcy; And in the third place, so far as the same shall extend, pay, divide, and distribute the residue of the said monies rateably amongst the Creditors without any preference or priority, in like manner as if the Debtor had been duly adjudged a Bankrupt on and at the date of these presents, and pay the residue, if any, to the Debtor.

3. **In** case the Trustees shall postpone the sale and conversion of the part of the said premises hereby assigned, comprising the business of the debtor, they shall in the meantime carry on and manage as part of the trust estate the said business, and if thought expedient or necessary employ the Debtor to assist in the management and winding-up thereof, and pay or allow him out of the trust estate such remuneration as to the Trustees shall seem reasonable for his trouble therein.

4. **If** it shall hereafter appear that the Debtor has at the date of these presents any property to the value of £20 or upwards not included in the first part of the first Schedule hereto, all such property shall, at the request of the Trustees and at the cost of the trust estate, be forthwith conveyed and assigned or otherwise made over by the Debtor unto the Trustees, to be held by them upon the same trusts as are hereinbefore declared of and concerning the property hereby assigned, or as near thereto as the circumstances will permit.

5. **And** it is hereby declared that the Trustees shall be entitled to be paid out of the trust estate as remuneration for their services, and in addition to their out-of-pocket expenses, a commission of per cent. upon the total amount of monies realised and comprising the Trust Estate, and a like commission upon the total amount of monies distributed to Creditors or otherwise hereunder.

6. **The** Trustees may compromise, submit to arbitration, or make such arrangements or compositions as they may think fit for the payment of any debt, claim, or demand whatsoever which may be claimed or made from the Debtor.

7. **The** Debtor shall at all times as he may be required furnish to the Trustees accounts, statements, and particulars of his property, debts, and engagements, together with all necessary vouchers and other evidence in verification thereof.

8. **In** case of any difficulty arising in the execution of the trusts of these presents the Trustees may refer the same to the Creditors, and for that purpose

call a meeting thereof for such time and place as they shall deem convenient, and any resolution passed at such meeting by a majority in number and three-fourths in value of the Creditors voting thereat, either personally or by proxy, in reference to the matter referred to them, shall bind all the other Creditors, and by such a resolution at such a meeting the accounts of the Trustees shall be passed and allowed, and the Trustees discharged from the trusts hereof and from all claims and demands in respect thereof.

9. **The** power of appointing a new Trustee or Trustees conferred by the Trustee Act, 1893, shall apply to these presents and shall be exercisable by a resolution of the Creditors assembled in a meeting called for that purpose by the Trustees and passed by a majority as aforesaid.

10. **In** addition to the powers conferred upon the Trustees by these presents it is expressly declared that they shall have and may exercise all the powers conferred upon Trustees in bankruptcy by the Bankruptcy Acts now or hereafter for the time being in force.

11. **Any** meeting of Creditors hereby authorised to be called shall be summoned by sending a notice thereof through the post to each Creditor or his agent at his usual or last known place of abode or business, such notice to be posted seven days at least before the day appointed for the meeting.

12. **In** consideration of the premises the Creditors do, and each of them doth, hereby release the Debtor from all debts, claims, and demands whatever, provided that in case the Debtor has concealed or kept back any part of his estate and effects then such release shall be void and of no effect. And provided also that nothing herein contained shall prejudice any right or remedy which any Creditor may have against any person other than the Debtor, nor prejudice or affect any mortgage, lien, or security, which any Creditor may have on any property of the Debtor, or of any other person, but such a creditor shall be entitled to receive a dividend in like manner as he would in case of bankruptcy.

In witness whereof the said parties to these presents have hereunto set their hands and seals the day and year first above written.

Signed, sealed, and delivered by the above-named A. B. in the presence of G. H., of &c.	A. B.	L. S.
Signed, sealed, and delivered by the above-named C. D. & E. F. in the presence of I. K., of &c.	C. D.	L. S.
	E. F.	L. S.

THE FIRST SCHEDULE ABOVE REFERRED TO.

The first part (property included in this assignment).

1. The stock-in-trade, book debts, credits, chattels, and effects, belonging or owing to the said in connection with his business of carried on at and the goodwill of the said business.

The furniture and household effects (*a*) in and about the messuage or dwelling-house at wherein the said resides, except what is comprised in the second part of this Schedule.

[*Add any further particulars.*]

The second part (property excluded).

The furniture, tools of trade, wearing apparel, and personal necessaries of the said and of the members of his family up to the value of £ .

[*Add any other particulars.*]

THE SECOND SCHEDULE ABOVE REFERRED TO.

Name of Creditor.	Seal of Creditor.	Amount of Debt.

DEFEASANCE.—A defeasance is some condition or proviso contained in a document separate from the contract to which it refers, which defeats the force of, or puts an end to, that contract. It differs from a "condition," strictly speaking, which is a proviso contained in the same document as the contract itself, and only modifies or restrains the force of the contract. The practical importance of appreciating the nature and effect of a defeasance exists chiefly where the defeasance is created in connection with bills of sale. The defeasance contained in the statutory form of a conditional bill of sale under the Bills of Sale Act, 1882, is the power therein conferred upon the grantee to, in certain events, seize and sell the goods the subject of the bill of sale and appropriate so much of the proceeds as may be necessary to satisfy his claim. But this is not really a defeasance. The defeasance to which we shall direct attention is that which is sometimes created in connection with an *absolute* bill of sale, with the object of making it operate as a *conditional* one. The operation is, in effect, directed at making what really purports to be an absolute assignment of goods into an assignment subject to a right of redemption by the former owner thereof upon the fulfilment of some prescribed condition. Such a defeasance invalidates the transaction as against the creditors of the former owner. The following is the sub-section of the Bills of Sale Act, 1878, that governs this subject:—

If the bill of sale is made or given subject to any defeasance or condition, or declaration of trust not contained in the body thereof, such defeasance, condition, or declaration shall be deemed to be part of the bill, and shall be written on the same paper or parchment therewith before the registration, and shall be truly set forth in the copy filed under this Act therewith and as part thereof, otherwise the registration shall be void.

A bill of sale is usually granted as the security for the repayment of a loan. When so granted, the bill of sale is known as a *conditional* one, and must be in the form prescribed by the Act of 1882, and that form only provides for defeasance in certain specified events; such as non-payment of

interest and principal and non-production of receipts, and the like. A conditional bill of sale is also only valid when the money secured thereby amounts to £30 at least. It is therefore possible for many occasions to arise which would suggest a necessity to avoid a strict compliance with the Acts. For example a loan may be arranged for £20, it being understood that the borrower's furniture shall be liable to seizure and sale for repayment of the loan in case of default, though until then it shall remain in the borrower's possession. Of course the obvious way of carrying out this arrangement would be for the borrower to mortgage the goods to the lender. When, however, the parties proceed to prepare such a mortgage, or conditional bill of sale as it really would be, they find that it cannot be effectively done because the amount of the loan is under £30. Then remembering that an absolute bill of sale may be executed without regard to amount, they conceive the idea of the borrower giving to the lender an absolute bill of sale accompanied by a separate agreement wherein it is set out that the goods, notwithstanding the actual reading of the absolute bill of sale, are not to be taken possession of by the lender so long as the borrower duly pays the interest or instalments upon the loan, and the bill of sale itself is null and void so soon as the full amount of the loan and interest is paid. Here we have all the making of a defeasance which will render that absolute bill of sale void as against the creditors of the borrower. Should any of them levy an execution on the furniture, they will be entitled to seize and sell it notwithstanding the fact that the borrower has purported to absolutely assign it to the lender. It may be, though, that a creditor upon seeing the absolute bill of sale, but not of course seeing the collateral agreement between the borrower and lender, and naturally knowing nothing at all about it, may hesitate to attempt to seize and sell the goods; but in all such cases he should make most careful inquiries into the circumstances surrounding the execution of the bill of sale in order to discover the collateral agreement, or defeasance, which so often exists. A reason why a defeasance is sometimes added to a conditional bill of sale is that the powers of seizure and sale conferred by the Act of 1882, and which are set out on p. 203 of vol. i., may be improperly stretched and extended in favour of the grantee.

A glance at the sub-section of the Act of 1878 and a remembrance of the fact that conditional bills of sale must be in complete accordance, so far as regards defeasances and conditions, with the form prescribed by the Act of 1882, should be sufficient to prove to any practical man of business the impossibility of any attempt at evasion meeting with success. Indeed he is so usually impressed with that view as to assume that every one else not only fully appreciates it, but would never venture upon the impossible. But ignorance of the law is more universally common than is imagined, and ignorance may lead even the wise into foolishness. A practising lawyer knows only too well that absolute bills of sale are always being effected, to which some defeasance is attached but not registered with the bill. And very frequently the bill of sale itself is not registered ; this is because so few people know what constitutes an absolute bill of sale, as explained in vol. i. pp. 199, 200. Evasions are constantly before the courts of law. They may not always be wilful evasions, but they are certainly instances of the disaster which so often attends clumsy and careless methods of business. The following is a

typical example. One Smith had for many years been carrying on business as a haulier, but during the latter year or so had become indebted to his friend Jones for various small loans made at different times, but amounting in all to about £150. Smith being in need of a further advance of £50 applied to his friend therefor, who agreed to advance it, and it was mutually agreed that certain waggons worth about £300 should be regarded as security for the repayment of the money. Instead of consulting the law upon the subject, and acting in accordance therewith, Smith gave to Jones a receipted bill for the waggons, it being therein expressed that he had sold them to Jones for £200; but the waggons continued *to remain in the possession* of Smith. This receipt was not registered; nor was a further agreement they arrived at ever put into writing and registered. This further agreement, or defeasance as the Act would call it, was to the effect that if Smith did not repay the money and keep up the interest until it was repaid, Jones should be at liberty to take the waggons away and sell them; but if and when it was repaid, then Jones would return the receipt, and the property in the waggons should revest in Smith. Some four years passed by; Smith had repaid £100 of the money lent, and duly paid his interest, but he had in the meantime got into debt with a third party who obtained a judgment against him for over £100. The judgment creditor therefore levied an execution upon the waggons; Jones then claimed them as his property; but the Court forced him to resign the waggons to the judgment creditor because the transaction in respect of which he derived a title to them was against the provisions of the Bills of Sale Acts.

It would not constitute a defeasance for a lender of money to send to the borrower, after the execution of the bill of sale and as forming no part of the bargain between the parties, a book of rules containing oppressive regulations not in the bill of sale, and providing for penalties in case of any default. Where a promissory note was given by the grantor to the grantee of a bill of sale, both documents being contemporary and made in respect of the same loan and transaction, the promissory note providing for payment by the same instalments and at the same dates as those set out in the bill of sale, but also providing that in case of default of payment of any one of the instalments the whole balance should become due and payable, it was held that the promissory note was a defeasance, and that the bill of sale was void, in that both the documents had not been registered together as one. *See* BILL OF SALE.

DEFENCE OF THE REALM.—Under the Acts of 1842 and 1864, bearing this title, as also under the Military Lands Acts, the military authorities have conferred upon them very extensive powers over public and private property. In aid of military purposes, the authorities may stop, divert, or alter the level of footpaths, highways, sewers, drains, and non-navigable streams, over, through, under, or adjoining any land vested in the Secretary of State, and affecting the use of fortifications and works of defence. interference of highways is only possible with the consent and by arrangement with the highway authority.

DEL CREDERE AGENT.—Such an agent is one who, in consideration of receiving a specified additional commission or reward from his principal, guarantees to him that all contracts in which he engages with third parties

on behalf of his principal, in the course of his agency, will be duly observed by them. For example, if a wholesale trader gives a *del credere* commission to his agent or factor, the latter holds himself responsible to his employer for any bad debts which may arise in connection with the agency. A *del credere* agent is only liable to his principal when default has been actually made by the party upon whom the obligation is primarily imposed; the principal has no right to look to the agent before he has sought to recover his due from the third party. Though an agent of this class is essentially a guarantor, it has been decided that the relationship of principal and *del credere* agent does not require an agreement in writing for its valid constitution; indeed the fact whether an agent is *del credere* or not may depend entirely upon the circumstances of any particular case and the inferences to be drawn therefrom. The usage of a particular trade may also be taken into account. *See* AGENCY.

DELEGATIONS.—The name given by continental bankers to letters of credit, circular notes, mandates, drafts, and similar documents each of which have the characteristic of authorising the addressee to hold a given sum at the disposal of the payee, or authorising the addressee to draw upon the writer or grantor for a given amount. They usually pass between bankers themselves who are known to one another, or between bankers and merchants of high standing; for though unstamped they are really bills of exchange which require stamping, and would consequently be of doubtful validity if made the basis of a claim in the courts in the event of dishonour. In addition to this, they are vague in their expression and non-negotiable. The first of these two facts would also add to the difficulty of recovery thereon in a court of law; but both facts have a special value to those who use these documents, for thereby they are made practically valueless to any one but the particular person or firm for whose service they are intended. In England the banks usually treat these documents as bills of exchange, stamping them and presenting them for acceptance after the expiration of the days of grace. *See* CIRCULAR NOTES.

DELIVERY, FOR.—This is an expression very frequently used in the course of business on, and connected with, the Stock Exchange. Generally speaking it is used in two connections. In the first it is said that a purchase or sale of stocks or shares is made "for delivery," when it is intended that the purchaser will take them up and pay cash for them directly the bargain is struck and the vendor has executed the transfer. The term is used to emphasise such a transaction, as it is not according to the general practice in Stock Exchange dealings, which is, that all bargains are made **for the account.** In the second signification the term is used to indicate that a particular purchase and sale, or bargain, is a *bonâ fide* one; done not, as a speculative bull or bear does, merely with the object of making a possible profit at the settlement and then carrying over, but with the intention of then either actually taking up the shares and paying for them, or delivering them and receiving their price, as the case may be. *See* also the various articles relating to dealing in stocks and shares.

DELIVERY, GOOD.—The question whether a particular delivery of stocks or shares is a good or a bad one is very frequently arising. It is usually in connection with two points that the question has any general

interest. The first is whether certain shares which may be tendered in delivery are in fact the shares quoted in the list, and in respect of which quotation the bargain has been done. The question may arise in a case where the shares are those of a company which has issued a large block of paid-up vendors' shares as well as the shares which have been offered to and subscribed by the public. If there is an official settlement of the price of that company's shares, it may be taken as an invariable rule that the settlement was limited to the shares issued to the public, and that it is in respect of those particular shares that the Stock Exchange committee intended the price and all dealings thereon to apply. As all the shares issued by the company are numbered, and the company, when applying for the official settlement of the price, had to disclose the numbers borne by the different classes of shares, the purchaser's broker knows at once from a glance at their numbers whether or not the shares offered in delivery by the seller are those in respect of which the deal was intended. If it appear that they are vendors' shares, he would decline to accept and pay for them on the ground of bad delivery. Should he incautiously take them, his client the purchaser will probably find himself the possessor of shares which have no market price or sale. But in course of time a company of stability obtains a quotation for its vendors' shares, in which case there need be no fear on the part of a purchaser of the possibility of a bad delivery. The second point which may give rise to the question of good or bad delivery usually occurs where the seller offers damaged bearer bonds to the purchaser, or bonds the coupons of which are missing or defaced. In both these cases the offered bonds are a bad dilivery.

DELIVERY ORDER.—This is a term very frequently met with in business life, being applied generally to any document which authorises the delivery of goods. But a delivery note, in the more restricted and proper sense—the subject of this article—is a document drawn by the owner of goods deposited with a warehouseman, and authorising the latter to deliver the goods, or some part of them, to a third party therein named. It will be convenient to call the owner the "bailor," the warehouseman the "bailee," and the third party the "deliveree," of the goods. A delivery order does not now require to be stamped, even though it deals with goods of the value of forty shillings lying in a dock, port, or warehouse in which goods are deposited on rent or hire. It is usual for merchants to keep a book of delivery order forms, printed in blank, ready to be filled in when required. When so dealt with, the forms are numbered consecutively, and, as in cheque books, have counter-foils for memoranda to be made and kept for reference of the particular details with which each form has been filled up.

These orders are practically negotiable instruments, for after they are issued to a deliveree they pass from hand to hand. If one is issued to the deliveree or bearer, it needs no indorsement by him before negotiation; but if issued to him "or order" he must indorse it. The practice in the negotiation of a delivery order is much the same as that of bills or cheques, and consequently, in a bearer order, the deliveree may indorse it restrictively. The difference between a delivery order and a bill or a cheque is that in the former case the subject of the documents is goods lying at a warehouse

Agreement made this nineteenth day of April One thousand nine hundred and ten **Between** John Richardson of 15 Robert Street Pimlico in the County of London Gentleman (hereinafter called "the Employer") of the one part and Richard Henry Collins of 315 London Road Lambeth in the same county Builder (hereinafter called "the Builder") of the other part **Whereas** the messuage and dwellinghouse hereinafter described is greatly dilapidated and requires to be wholly new fronted and otherwise repaired and the builder hath agreed with the employer to repair and complete the same for the sum of Ninety pounds in the manner and within the time hereinafter mentioned **Now these presents witness** that the builder doth hereby agree with the employer that he will at his own proper cost and charges make and complete and finish in a proper and workmanlike manner and with good substantial and sufficient materials of every kind as set forth in the Specification set out in the schedule hereto the several alterations reparations and amendments more particularly described in the said specification and the plans thereon referred to to the messuage and dwellinghouse situate and being No. 38 Trafalgar Square Pimlico aforesaid and which specification and plans the builder hereby admits are accurate and sufficient for the works mentioned **And also** that the said messuage and dwellinghouse and all and every the matters and things set out in the specification shall be completely finished on the Nineteenth day of June Nineteen hundred and ten according to the true intent and meaning hereof and of the specification and to the satisfaction of the employer's surveyor unless prevented by strikes of workmen accidents by fire storm and tempest or alterations and additions ordered by the said surveyor **And** if it shall happen that the said work or any part thereof shall not be so completed by the said Nineteenth day of June Nineteen hundred and ten (save as aforesaid only) that then he the builder will pay to the employer as and for liquidated damages the sum of Two pounds for every day for and during which the said work or any part thereof shall thereafter remain and be in any respect unfinished **And** moreover he the builder will at all times hereafter save and keep harmless and indemnified the employer and the said messuage and dwellinghouse from and against all fines penalties punishments and

forfeitures whatsoever which shall or may be incurred by reason of any irregularity or default which there shall be in the said building or any part thereof under or by virtue of or contrary to the London Building Acts or any act now or then in force touching the building rebuilding or repairing of houses **And** it is hereby agreed that all the old timber and other materials which shall be taken away from the aforesaid buildings and reparations shall belong to and be the absolute property of the builder **And in consideration** and upon condition of the said work being so done and completed as aforesaid he the employer will pay to the builder such sum weekly during the progress of the work as may be sufficient for paying for the labour performed in the works as the said surveyor shall week by week certify in writing and the residue of the said sum of Ninety pounds within fourteen days next after the said messuage and dwellinghouse shall be completely repaired and amended and other the said work done in the manner aforesaid and according to the true intent and meaning of these presents and to the satisfaction of the said surveyor **And** also that all questions of value and matters in dispute between the said parties arising out of and incidental to these presents shall be left to the decision of two competent surveyors one to be chosen by each party or by a third surveyor to be chosen by them before entering upon the settlement of any such question or dispute and the decision of such surveyors or umpire shall be final and conclusive

The Schedule

As witness the hands of the said parties

Witness
John Roberts
14 Graham St
E.C.

J. Richardson

R. H Collins

whilst in the latter case the subject is money in the hands of some person or bank. But the analogy between a delivery order and a bill or cheque must not be insisted upon too closely, for as a matter of strict law a delivery order is not a negotiable instrument, and its holder can only give a good title to the goods it represents if he took it in good faith and without notice of any vendor's lien upon the goods. And this is where the distinction between the two kinds of documents is so necessary. Goods cannot, by their own nature and by the nature of the usual dealings in them, be so proper a subject for a negotiable instrument of title as money can be. For one thing, it is the specific goods, and those only, that the deliveree or any subsequent holder of the delivery note requires; and for another thing, these goods may be subject to a lien in favour of the vendor for unpaid purchase-money, in favour of the warehouseman for rent, or in favour of a carrier for carriage. The deliveree, or holder, could not therefore obtain the specific goods if they were lost or burnt, for example; nor could he obtain them without making some further payment if they were subject to a lien. On the other hand, the holder of a bill does not require payment of any particular pieces of money which may be lost or be subject to appropriation by others; he only requires payment of a specific sum. The following is a usual form of delivery order:—

14 LEADENHALL STREET,
LONDON, E.C., 14*th Feb.* 1910.

GEO. SMITH & Co.,
Timber Merchants.

TO THE SUPERINTENDENT,
Surrey Commercial Docks.

Please deliver to *Richard Marsh & Co., or bearer,* the undermentioned Goods, entered by.....
on.....in the Ship.....
Captain.....from .....
Charges..... .....

George Smith & Co.

MARK.	NO.	

The above will be seen to be an order in respect of imported goods lying in a dock warehouse. But before proceeding to explain it, it should be here mentioned that a delivery order is equally applicable to goods lying with their vendor. But when the vendor himself gives a delivery order in respect of the goods he has sold, this does not operate as a renunciation of any lien he may have thereon nor does it change their legal possession, for in law the delivery order is nothing more than a mere promise to deliver—it is not an

actual and definitive delivery. And so if the vendor, not having himself possession of the goods, gives a delivery order thereof to their bailee in favour of the purchaser, he is still entitled to exercise his rights as a vendor, such as the right of *stoppage in transitu*. But here the reader will remember that a *bonâ fide* holder of the delivery order without notice of the vendor's lien will not be affected by it, and as against him the vendor will be powerless. Nor by merely giving a delivery order to the purchaser can a vendor thereby insist that the purchaser has accepted the delivery, unless the third party upon whom the delivery order has been drawn has acknowledged that he holds them for the purchaser.

To return to the above form. Upon the arrival of the ship carrying the goods, the importer takes his bill of lading to the ship's agent, who in exchange for it gives to the importer a delivery order for the goods. In some cases, however, the agent indorses the delivery order upon the back of the bill of lading, leaving it to be given up by the importer when the goods are actually received. Should the importer not desire to take the goods away himself, they may be received for him by the dock company, or a wharfinger who will keep them at his disposal. The dock company will then give the importer a dock warrant and will only deliver up the goods in exchange for that document. But for sake of convenience the importer lodges with the dock company the dock warrant, and proceeds to draw the goods as he requires them by means of delivery orders, of which the above form is an example. We have called the importers in the above example Messrs. Geo. Smith & Co., so that they having sold some part of the just imported goods to Messrs. Richard Marsh & Co., give to them the delivery order therefor. Messrs. Marsh need not take delivery themselves, but can if they prefer it sell the goods to another firm to whom they will indorse the order. And so the document may possibly pass through quite a number of hands before the goods are actually taken out of the warehouse—the dock company delivering them up to whoever presents the delivery order properly indorsed. *See* BAILMENT; DOCK WARRANT; FACTORS.

DEMONETISATION is the term applied to the official and formal discontinuance of the use of a coin and the withdrawal thereof from circulation. As a consequence of demonetisation, the coin is removed from the rank of legal tender to that of mere token money. In the United Kingdom the withdrawal of any part of the coinage is effected by royal proclamation according to the provisions of the Coinage Act, 1889, the various proclamations which have from time to time been made thereunder having had the effect upon our money summarised in the article on COINAGE. In the case of all gold standard money, such as the sovereign, a demonetisation necessarily involves a loss to the Government, even if it is only the result of the slight depreciation caused by use. Token money, or even silver standard money, may involve a still greater loss, for the metal out of which it is made, such as copper or silver, may have depreciated very considerably during the period between its issue and its demonetisation. On the other hand, the metal may have appreciated; but if this were so it is highly improbable that the Government would obtain the advantage, for, in the natural course of things, its holders would only dispose of it upon business principles through commerical agencies.

DEMURRAGE.—The days which are given by the shipowner to the charterer in a charter-party, either to load or unload without paying for the use of the ship, are the *lay-days;* but days are sometimes given, also in favour of the charterer, which are called *demurrage-days.* These days are beyond the lay-days, but during which he has to pay for the use of the ship in a fixed sum. In addition, however, to this meaning the word "demurrage" is used to denote the compensation payable by the owner of goods to the shipowner in respect of any delay which may have arisen in the loading or unloading of the goods into or out of the ship. In this sense demurrage may be incidental to a bill of lading as well as to a charter-party. When dealing with demurrage-days, the compensation will be according to the sum fixed in the contract of affreightment; but in the case of demurrage the compensation is a matter of estimate according to the circumstances of the particular case.

To determine the time at which demurrage may become payable, reference must be made in all cases to the contract, and particularly the clause therein specifying the lay-days, for, as we have seen, it is not until these days have ended that demurrage commences. Lay-days mean as a general rule all days not excluding Sundays or holidays; but this rule is subject to any custom to the contrary, as well as to any modification to that meaning introduced by the context. When providing for lay-days, different contracts may do so in different words or phrases; for example the expression used may be "within so many days," "running days," or "working days," or "according to the usual despatch of the post," or "in the usual and customary manner," or "as fast as the ship can deliver," or "at the rate of so many tons per day." As a general rule the consequences of every default by the shipper in the matter of delay in the time he should take in loading or unloading must be borne by himself personally. It does not matter that the delay has been caused by circumstances over which he has no control; the shipowner is entitled to receive from him a demurrage. But to this may be set off another and an opposing general rule, that if the default or delay is the inevitable consequence of the shipowner's wilful and wrongful neglect or negligence, the shipper is relieved from any liability. The shipper should therefore be careful to see that the charter-party or bill of lading contains some proviso limiting his liability—excluding, for instance, responsibility for a delay caused by the act of God, the act of a foreign government, or strikes. If the contract does not specify any lay-days at all, then the shipper must use reasonable despatch in his loading and unloading.

In determining the commencement of the running of the lay-days, regard should be had to the following rules. If a *port* is named in the contract of affreightment, they begin when the ship has reached the usual place of discharge there, or the place there to which the charterers have ordered her to go. But where a *dock* is named, the lay-days commence directly the ship is inside it, and their commencement is not postponed until the ship has reached some particular place in it. For a contract to name the *berth* is for it to make the lay-days commence directly the ship is berthed there. Lay-days do not as a rule commence until the day after the ship has reached her place of discharge, but when they have commenced they will be calendar days and not days of twenty-four hours each. In accordance with this rule, part of a demurrage day will count as a full day.

In the case of a charter-party, the charterer is generally the person liable to pay and be sued for demurrage. In the case of a bill of lading it is the shipper; though if he has assigned it with the goods to a third party, the latter, when claiming the goods, can be required to pay the demurrage. A bill of lading is usually only subject to demurrage when it has reference to goods conveyed in a chartered ship; then the bills of lading are usually made to be expressly subject to the same conditions as those upon which the shipowners granted the charter-party to the charterer. In other words a bill of lading is, generally speaking, only subject to liability for demurrage when the ship which carries the goods it refers to is one which has been let on hire by her owners to the person who contracts with the merchant for the carriage of his goods. Such a bill of lading does not itself usually set out the clauses which provide for demurrage, but merely states that those in the charter-party are incorporated in it. But this statement must be clear and precise in order to bind the shipper. The following is a usual form: "Goods being deliverable on payment of freight and all other conditions as per charter-party." A shipper under such a bill of lading, or its assignee or indorsee, or the consignee of the goods, should therefore be prepared for possibly unpleasant contingencies thereunder. Demurrage may be payable simply because of a delay caused only by the goods of other consignees being stowed on the top of his goods. The shipowner has usually a lien upon the goods for demurrage, and the contract for this is usually contained in the clause known as the *cesser clause*, and which is generally in the following form: "To have a lien on the cargo for all freight, dead freight, and demurrage, in consideration of which charterer's liability to cease on the cargo being shipped, provided it is worth the stipulated freight." The clause is so called because it provides for the cessation of the charterer's liability upon the cargo being shipped. *See* AFFREIGHTMENT; BILL OF LADING; CHARTER-PARTY; FREIGHT.

DENTIST.—No person is entitled to take or use the title of "dentist," either alone or in combination with any other word or words, or of "dental practitioner," or any name, title, or description (whether expressed in words or by letters, or partly in one way and partly in the other), implying that he is registered under the Dentists Act, 1878, or that he is a person "specially qualified to practise dentistry," unless he is in fact registered under that Act. For any person other than a legally qualified medical practitioner to do so without being registered is to incur a fine of £20, recoverable before the magistrates. No offence under the Act will be committed if the person charged can show: (*a*) that he is not ordinarily resident in the United Kingdom, and that he holds a qualification which entitles him to practise dentistry or dental surgery in a British possession or foreign country, and that he did not represent himself to be registered under the Act; or (*b*) that he has been registered, and continues to be entitled to be registered under the Act, but that his name has been erased on the ground only that he has ceased to practise. For any one to take or use the designation of any qualification or certificate in relation to dentistry or dental surgery which he does not possess, is to incur a penalty of £20. Any private person, as well as the medical authorities, may institute prosecutions under the Act; they are now usually undertaken by the British Dental Association. A duly registered

person has the privilege of practising dentistry and dental surgery in any part of his Majesty's dominions; but no person who is not registered or is not a legally qualified medical practitioner can recover any fee or charge in any court for the performance of any dental operation or for any dental attendance or advice.

Registration.—Any person is entitled to be registered who (*a*) is a licentiate in dental surgery or dentistry of any of the medical authorities,—that is to say, of any body or university that chooses members of the General Medical Council; (*b*) is entitled as hereinafter mentioned to be registered as a foreign or colonial dentist; or (*c*) was at the passing of the Act in 1878 *bonâ fide* engaged in the practice of dentistry or dental surgery, either separately or in conjunction with the practice of medicine, surgery, or pharmacy. A person is entitled to be registered in the Dentists' Register upon producing or sending to the general registrar the document conferring or evidencing his licence or qualification, with a statement of his name and address, and the other particulars, if any, required for registration, and payment of the registration fee. Foreign and colonial dentists may be registered as such when holding recognised certificates, and if registration is refused them they may appeal to the Privy Council. The Dentists' Register is kept under the authority of the General Medical Council, and contains a list of all registered dental practitioners with their addresses and qualifications. Only with the consent of the registered dentist may his name be struck out of the register upon his ceasing to practise; but after the registrar has sent to that person a certain number of letters on the subject, one of which must be registered, and has not received any reply within a certain time, he may strike the name off the register without such consent.

The name of a dental practitioner may be struck off the register if he has at any time been convicted of a crime, or been guilty of any infamous or disgraceful conduct in a professional respect. But the name of a person may not be taken off the register only on account of his adopting or refraining from adopting the practice of any particular theory of dentistry or dental surgery; nor on account of a conviction for a political offence out of his Majesty's dominions; nor on account of a conviction for an offence which, though technically sufficient, does not, either from the trivial nature of the offence or from the circumstances under which it was permitted, disqualify a person from practising dentistry. A name may be restored to the register either by order of the General Medical Council or of a court of law. Every registered dentist is exempt, if he so desires, from serving on all juries and inquests whatsoever, and from serving all corporate, parochial, ward and township offices, and from serving in the militia.

Some cases.—*Recovering charges.*—A lady went to her dentist and ordered a set of artificial teeth, which by the terms of the contract were to be fitted to her mouth, but before they were so fitted she died. Upon an action being brought by the dentist against her executor for payment of his charges, it was held that the contract was one of sale of goods, and should have been reduced to writing and signed by the deceased; the dentist was unable to recover for the price of work and labour done and materials provided. The Dentists Act prevents an unqualified person from recovering any fee or charge for dental operations or dental attendance or advice. There is nothing, however,

in the Act which renders a contract to do such work illegal. And, moreover, an unqualified person can recover fees in respect of mechanical work done or materials supplied in the course of dental operations or attendance, such work, etc., not being within the scope of the Act. So, where money has been paid to an unqualified person on general account of services partly within and partly without the scope of the Act, he can appropriate it to the payment of the fees and charges he may lawfully recover and maintain an action for the recovery of any balance of such fees and charges (*Seymour* v. *Pickett*). *Failure in Professional Skill.*—In the case of a registered practitioner, including the holder of a diploma or licence, or other such badge of his profession, the law assumes that he holds himself out as possessed of the ordinary skill and care of his profession. In the case of an unregistered practitioner, if he is not known to the person operated upon to be unregistered, he must attain the standard of skill of the registered practitioner at the place and in the circumstances where the services are rendered; if known to be unregistered, then only the skill which he professes or announces (*Dickson* v. *Hygienic Institute*). *Style of Unregistered Practitioner.*—There is nothing in the Act which prevents any man from doing dentist's work and informing the public that he does such work without being registered under the Act. But, unless registered, he must not use a style, title, or description implying that he is "specially qualified to practise dentistry." The words "specially qualified to practise dentistry" in the Act import a professional qualification entitling the holder to registration, and not merely professional skill or competence (*Bellerby* v. *Heyworth*). Whether or no in a particular case the style or description under which an unqualified person practises is illegal under the Act is a question of fact for the magistrate. If there is evidence to support his finding, it will not be upset on appeal. *A Company* cannot use any name or description implying that they are registered dentists where the business carried on is, in fact, that of unregistered practitioners.

DERELICT may refer to land left uncovered by the receding of waters from its former bed, in which case the land belongs to the owner of the adjoining soil if it has been so left gradually, or to the Crown if the sea has retired suddenly; or it may refer to personal property thrown away on land by its owner and abandoned by him in such a manner as to indicate an absolute renunciation of his ownership therein; or finally, it may indicate the absolute abandonment of property at sea. It is in the last sense that we propose dealing with the subject. To constitute a dereliction there must be an actual act of abandonment, coupled with an intention at the time both to abandon and to absolutely renounce the rights of ownership. There is no dereliction, therefore, in a case where articles are cast overboard in a tempest in order to lighten the ship, nor where a ship being grounded on sand is abandoned by her crew, nor where a ship having sprung a leak is abandoned at sea. But any ship passing by after the abandonment and finding the property or ship deserted and in a dangerous condition, is entitled to treat it as a derelict. Not only has the passing ship this option, but the master of a British ship who becomes aware of the existence on the high seas of any floating derelict vessel is bound, under statutory authority, to notify it and give all the information he has concerning it to the Lloyd's agent at his next port of call, or direct to Lloyd's itself.

The finders, or salvors, who bring it home in safety are entitled to a recompense as SALVAGE (*q.v.*). Salvors do not generally get more than one-

half of the value of the property salved, or less than one-third; the balance goes to the owners of the property if they can be found, or in their absence to the Admiralty if it is not then claimed by them within a year and a day.

DESERTED PREMISES.—Landlords are often great sufferers by tenants running away leaving their rent in arrear, and not only allowing the premises to lie vacant and uncultivated without any goods thereon available for distress, but also refusing to deliver up the possession of the premises. Under such circumstances, landlords were formerly put to the expense and delay of recovering possession by an action for ejectment, but by the combined effect of two Acts passed in the reigns of George II. and George III. respectively, more summary and convenient proceedings are now available. The following is an abstract of the effect of the statutory enactments on the subject:—

If any tenant holding any lands or tenements at a rack-rent, or where the rent reserved is fully three-fourths of their yearly value, and who is in arrear for six months' rent, shall desert the premises and leave them uncultivated or unoccupied, so as no sufficient distress can be had to countervail the arrears of rent, the landlord may proceed to obtain possession. In such circumstances any two or more justices of the peace who have themselves no interest in the premises will, at the request of the landlord, go upon and view the premises, and affix, or cause to be affixed, on the most notorious part thereof a written notice as to what day (at the distance of fourteen days at least) they will return to take a second view thereof. If upon the second view the tenant does not appear and pay the rent in arrear, or there is not sufficient distress upon the premises, the justices may put the landlord into possession, and the lease thereof to the tenant will thenceforth become void. A tenant who is aggrieved by such proceedings has a right of appeal, and in case he succeeds thereon he may be reinstated.

This procedure is available no matter whether the tenant holds the premises under any lease or agreement either written or verbal, and although no right or power of entry is reserved or given to the landlord in case of non-payment of rent; but, as will be seen above, the rent must be in arrear for at least six months. A stipendiary magistrate may act instead of two justices; and in London such a magistrate, after hearing the evidence of the landlord, may order a constable to view the premises and affix the necessary notice. If the tenant continues in default notwithstanding the notice, the magistrate will give possession to the landlord. *See* EJECTMENT; LANDLORD AND TENANT.

DESIGNS.—*Definition.*—For the purposes of the Patents, Designs, and Trade Marks Act, 1883, which provided for the copyright and registration of designs, the word "design" was expressed to mean "any design applicable to any article of manufacture, or to any substance artificial or natural, or partly artificial or natural, whether the design is applicable for the pattern, or for the shape or configuration, or for the ornament thereof, or for any two or more of such purposes, and by whatever means it is applicable, whether by printing, painting, embroidering, weaving, sewing, modelling, casting, embossing, engraving, staining, or any other means whatever, manual, mechanical, or chemical, separate or combined," and not being a design for SCULPTURE (*q.v.*). The same Act defines the word "copyright" in this connection as "the exclusive right to apply a design to any article of manufacture or to

any such substance as aforesaid in the class or classes in which the design is registered." The Patents and Designs Act, 1907, which consolidated and repealed the earlier law on this subject, is now the statutory authority.

An invention cannot be protected under the guise of a design, and consequently inventors and designers should appreciate the distinction between the two. Improvements in the construction, arrangement, or application of machinery can only be protected by a patent. A mere mode or *process of manufacture* is not, as such, capable of registration as a design. A design must be capable of an existence outside the article itself. It must be something, said Mr. Justice Vaughan-Williams, that one can apprehend, and something which, if one has it presented to one's eyes, one can see externally to the article to which it is to be applied, or to which it is intended to be applied. To merely manufacture a universally used article of everyday appearance by a new method, and so to obtain a new appearance for it, is not to create a design which the law will protect. One might go through a great number of instances in which an alteration or a slight variation between one article and another article of a similar kind would gain some purpose, but it could never be said for one moment that it was in the mind of the person who made that alteration that he intended to alter the configuration for the configuration's sake, or in any way to please the eye. *Colour* cannot be the subject of a design.

The word design must therefore be taken in its ordinary signification of something marked out, a plan or representation of something. But the above definition of the word as set out in the Act shows that the protection of the Act does not extend to all designs, but only to such as are applicable to some article of manufacture. The Act does not prohibit the multiplication of copies of drawings, engravings, photographs, or pictures, copyright in them being governed by a different statute; but it is confined to designs applicable to manufactured articles and to the application of such designs to such articles. Again, the Act does not apply to the things to which a design is applied; the Act applies to the design applied to them. The distinction is obvious enough, remarks Lord Justice Lindley, when the design is for a pattern or ornament, but when the design is for the shape of a thing, the distinction is reduced to the difference between the shape of a thing and a thing of that shape. A design applicable to a thing for its shape can only be applied to a thing by making it in that shape. The Act applies to all such designs as are within its scope, whether they add to the *utility* of the articles to which they are applied or whether they do not. The question of utility is wholly immaterial when considering the subject of designs.

Novelty.—But only designs which are new or original and have not previously been published in the United Kingdom are capable of registration. The Act does not require novelty in the *idea*. It deals only with novelty or originality in the *design;* that is to say, in a combination calculated to produce a particular end—novelty in the way in which the idea is to be rendered applicable to some special subject-matter. In the case of the design of an article of manufacture, its novelty must be regarded and tested throughout as that novelty which is expected and demanded from a design intended to be applicable to such an article. Westminster Abbey, though in one sense a very valuable design, is not as it stands a design capable of copyright; nor would a photograph of it be a design; nor would a copy of that photograph. But if the abbey is used as a design there is a possibility of its acquiring a

novelty and originality for that purpose. Merely because it is a source open to mankind does not prevent its availability for a design; otherwise it would be impossible to take any natural or artistic object and to reduce it into a design applicable to an article of manufacture, without altering the design so as not to represent exactly the original. You could not, said Lord Justice Bowen, take a tree and put it on a spoon, unless you drew the tree in some shape in which a tree never grew; nor an elephant, unless you carved a kind of elephant which had never been seen. An illustration might be borrowed from what are known as apostle spoons. The figures of the apostles are figures which have been embodied in sacred art for centuries, and there is nothing new in taking them as the idea; but the novelty of applying the figures of the apostles to spoons was in contriving to design the apostles' figures so that they should be applicable to that particular subject-matter. The novelty of a design consists in so contriving the copy or imitation of the figure, which itself may be common to the world, in such a manner as to render it applicable to an article of manufacture. Again, there is no novelty or originality in applying to a cycle handle a form of decoration which is in common use upon other articles of a cylindrical shape (*Dover* v. *Nürnberger*).

Classes of goods.—Goods in respect to which designs may be applied and registered are divided into fourteen classes, the protection afforded to a registered design being restricted to the particular class or classes of goods in which the design is registered, though the same design may be registered in more than one class and at later dates. A list of these classes now follows, the question of novelty being hereafter resumed. (1) Articles composed wholly or chiefly of metal not included in Class 2. (2) Jewellery. (3) Articles composed wholly or chiefly of wood, bone, ivory, papier-mâché, or other solid substances not included in other classes, or of materials in which such substances predominate. (4) Articles composed wholly or chiefly of glass, earthenware, or porcelain, bricks, tiles, or cement, or in which such materials predominate. (5) Articles composed wholly or chiefly of paper (except hangings), cardboard, mill-board, or straw-board, or in which such materials predominate. (6) Articles composed wholly of leather, or in which leather predominates, and bookbinding of all materials. (7) Paper-hangings. (8) Carpets and rugs in all materials, floor-cloths and oilcloths. (9) Lace. (10) Hosiery. (11) Millinery and wearing-apparel, including boots and shoes. (12) Ornamental needlework on muslin or other textile fabrics. (13) Printed or woven designs on textile piece goods (other than checks or stripes). (14) Printed or woven designs on handkerchiefs and shawls (other than checks or stripes). (15) Printed or woven designs (on textile piece goods or on handkerchiefs and shawls) being checks or stripes. (16) Goods not included in other classes.

Novelty in relation to class.—If a design is old in its application to some manufactured article, its application to a new substance does not necessarily entitle it to protection although the new substance does not fall within the class to which the first article belongs. To be capable of registration, a design must be new or original in fact, and not new or original as to some particular class of articles only. It cannot be said to be new or original if it is already being applied to articles of an analogous character; but notwithstanding this, it is not necessary that a design, in order to be new or original, should never have been seen before as applied to any article whatever. The design must be new or original with reference to the kind of article for which it is registered; meaning by kind of article not either of

the above-mentioned classes, but the kind of article having regard to its general use. A design may be new for a coal-scuttle but not for a bonnet. On the other hand a design for a shade of a gas lamp can hardly be new if it was old for an oil lamp. A shape may be new or original in its application for example to electric lamps, which are modern inventions, and yet be neither new nor original in its application to gas or oil lamps. If the shape was common to such lamps as were used before electric lighting was invented, the design is one which the law will not protect. There must in such a case be some novelty or originality in the shape, as applied to sources of light, in order that a design for the shape of a lamp can be protected.

There is, moreover, an essential meaning to the words "novel or original"—that the design must be *substantially novel* or substantially original, having regard to the nature and character of the subject-matter to which it is applied. Take for example the case of a scarf for which novelty of design was claimed in respect of the stitching of the outer sides of the two limbs in a special manner, so as to produce certain desired creases and depressions and give it a *négligé* appearance, whence it was called the "Négligé Scarf." In refusing to consider that such a scarf had a design capable of registration, the judge said that it seemed to him that if he were to hold that this was a registered design which would prevent anybody from making that which came as near it as a certain other scarf before the court, he would be holding that the difference of a few stitches constituted a proper subject-matter of registration. In fact, minute differences are not sufficient to constitute novelty or originality. Take the case of a shirt. It is not every mere difference of cut, every change of outline, every change of length or breadth or configuration, in such a simple article of dress which constitutes novelty of design. There must be not a mere novelty of outline, but a substantial novelty in the design, having regard to the nature of the article.

A combination of old designs may constitute such a new or original design as will be capable of registration. To some extent the courts have in the past shown more liberality in dealing with such cases for registration of designs than in cases based upon the same principle for protection by patent. But this liberality cannot with safety be relied upon; and apart from that, people who manufacture articles with only a slight alteration in form from other articles already manufactured, should not rush into the mistake of registering their design and thus cause an embarrassment to trade. The combination must result in the production of some real novelty. An article which is novel in its arrangement, novel in its details as a combination, and novel also in its general design and appearance, would be held to present a novelty and originality sufficient to constitute the subject fit for registration. It does not matter that no part, perhaps, of the article can be said to be by itself or in itself original; it is the combination of the things —the putting them together—which constitutes the novelty and the originality of the article, considered as a composite thing.

Prior publication.—If the designer or proprietor of the design should publish it before registration, the registration will afford him no protection. The only modification to this rule is that in favour of any *bonâ fide* private and confidential publication of the design which may be made for the purpose of advice, assistance, or manufacture, or to a person who is under a duty to preserve a secrecy in regard to it. Should even the person to whom the confidential publication is made break the confidence reposed in him and com-

municate the design to others, that breach of confidence may constitute such a publication as will vitiate the registration. If the designer should subordinate his confidential publication to a more practical commercial transaction or negotiation in relation to the design, the publication will not be privileged, and his right to protection will be lost.

Copyright.—*Duration.*—When a design is registered, the registered proprietor of the design has a copyright therein, subject to its validity at law as a new or original design and to the provisions of the Act generally, during and for a period of **five years** from the date of the registration, and this term may be extended, upon due application, for a further period of five years. The author of any new and original design is considered by the law to be the *proprietor* thereof, unless he executed the work on behalf of another person for a good or valuable consideration, in which case such other person will be considered the proprietor. And also every person acquiring for a good or valuable consideration a new and original design, or the right to apply the same to any article or substance within the scope of a definition of a design at the commencement of this article, either exclusively of any other person or otherwise, is considered the proprietor of the design in the respect in which the same may have been acquired, and to that extent and not otherwise. And to a like extent, every person on whom the property in such design or such right to the application thereof shall devolve is considered its proprietor. Before delivery on sale of any articles to which a registered design has been applied, the proprietor must (if exact representations or specimens were not furnished on the application for registration) furnish the comptroller of designs with exact representations or specimens of the design; and if he fails to do so, his name may be erased from the register, and thereupon his copyright in the design will cease.

And also, before delivery on sale, the proprietor must mark each article with the *prescribed mark*, or with the prescribed words or figures, denoting that the design is registered; and if he fails to do so he will be unable to recover any penalty or damages in respect of an infringement, unless he shows that he took all proper steps to ensure the marking of the article. During the existence of the copyright, or such shorter period not being less than two years from registration as may be prescribed, the design is open to *the inspection* of only the proprietor, or a person authorised in writing by the proprietor, or a person authorised by the comptroller or the court, and furnishing such information as enables the design to be identified. The inspection can only take place in the presence of the comptroller or his officer, and the person inspecting is not entitled to take any copy of the design, or of any part thereof. After the expiration of the copyright, or such shorter period as aforesaid, the design may be inspected and copied by any person who pays the prescribed fees. If registration of a design is refused on the ground of identity with a design already registered, the applicant for registration is entitled to inspect the design registered.

Information as to existence of copyright.—On the request of any person producing a particular design, together with its mark of registration, or producing only its mark of registration, or furnishing such information as enables the comptroller to identify the design, the comptroller, on payment of the prescribed fee, is bound to inform that person whether the registration still exists in respect of the design, and state also the date of the registration and the name and address of the registered proprietor. If a registered design

is used in manufacture in any *foreign country*, and is not used in this country within six months of its registration here, the copyright in the design ceases.

Exhibition.—The exhibition of a design or of any article to which a design is applied, or the publication, during the holding of an exhibition, of a description of a design, does not prevent that design being registered or invalidate its registration. But the following conditions must be complied with, namely: (*a*) The exhibitor must, before exhibiting the design or article or publishing a description of it, give the comptroller the prescribed notice of his intention to do so; and (*b*) the application for registration must be made before or within six months from the date of the opening of the exhibition. This privilege is restricted to exhibitions at an industrial or international exhibition certified as such by the Board of Trade or the subject of an Order in Council. It extends, however, to excuse and protect the exhibition of the design elsewhere than in the authorised exhibition, but during the period of the holding thereof, by some unauthorised person without the privity or consent of its proprietor.

Piracy.—*Imitation.*—During the existence of copyright in any design—(*a*) it is not lawful for any person, without the leave or written consent of the registered proprietor, to apply or cause to be applied such design or any fraudulent or obvious imitation thereof, in the class or classes of goods in which the design is registered for purposes of sale, to any article of manufacture or to any substance artificial or natural, or partly artificial and partly natural; and (*b*) it is not lawful for any person to publish or expose for sale any article of manufacture or any substance to which such design or any fraudulent or obvious imitation thereof has been so applied, knowing that the same has been so applied without the consent of the registered proprietor. Any person who acts in contravention hereof will be liable for every offence to **forfeit** a sum not exceeding £50 to the registered proprietor, who may recover the sum forfeited as a simple contract debt by action in any court of competent jurisdiction. But the total sum forfeited in respect of any one design is not to exceed £100. *Damages.*—Notwithstanding the foregoing provision for the recovery of a penalty, the registered proprietor of any design may (if he elects to do so) bring an action for the recovery of damages. These damages must result from the application of the design, or of any fraudulent or obvious imitation thereof for the purpose of sale, to any article of manufacture or substance. Or from the publication, sale, or exposure for sale, by any person of any article or substance to which the design or any fraudulent or obvious imitation thereof has been so applied, the person from whom the damages are claimed must have known that the proprietor had not given his consent to the wrongful application of the design.

How to register a design.—The Patents and Designs Acts and the Designs Rules thereunder should be studied and followed. The Rules contain the necessary forms, and can be purchased for a few pence at the Patent Office, Sale Branch, 25 Southampton Buildings, London, W.C. Applications sent by post should be addressed—The Comptroller, Patent Office, Designs Branch, 25 Southampton Buildings, London, W.C.

Application.—Stamped forms of application to register can be obtained at the following places: (*a*) The Inland Revenue Office, Royal Courts of Justice,

London; (*b*) The General and District Post-Offices in London; (*c*) The chief Post-Office at each of the principal towns of Great Britain and Ireland. These forms are not supplied by the Patent Office; but in addition to the above places, they may be obtained at a few days notice at any Money Order Office in the United Kingdom upon prepayment of the value of the stamp. If it should not be convenient to apply in person in either of the ways specified, the stamped forms can be ordered by applicants at home or abroad by post from the Comptroller of Stamps, Room 7, Inland Revenue Office, Somerset House, London, W.C. In that case a Banker's Draft or a Money or Postal Order, payable to the Commissioners of Inland Revenue and crossed Bank of England, for the value of the stamp and for the cost of postage and registration, should be forwarded with the application. An **application** consists of the following: (1) The form of application, Form E or Form O, properly filled up and signed by the applicant or his authorised agent, and (2) three exactly similar drawings, photographs, or specimens of the design. The agent should be a Solicitor or a Patent Agent; but there is nothing to prevent any other person acting on behalf of the applicant in the matter so long as he does not hold himself out as a Solicitor or Patent Agent. In the case of a Lace Design the proper forms are Form E[1] (Single Design) and Form O[1] (Set). Applicants should be specially careful to give correctly their full name and address, with their trade, business, or occupation; also to fill in after the words "Statement of nature of Design" the words "for the Pattern," "for the Shape or Configuration," or "for the Ornament," or for any two or more such purposes as the case may be, adding, when necessary, a short technical description of the article with the part or parts claimed as new or original specially defined. If it is desired to secure a date of registration at once, one sketch of the design (sufficiently definite to identify it) may be sent with the application form. In this case the design, if accepted, will eventually be registered as of the date on which the sketch was received; but no certificate of registration can be issued until three exact drawings, photographs, or specimens have been sent in substitution for the sketch. Omission to send these further documents will cause a failure of the copyright (see p. 123).

Drawings or Photographs.—The drawings, &c., accompanying an application must be sent in triplicate, each representation of each design or set to be upon ordinary foolscap paper, and not on cardboard (on one side only), of the size of 13 inches by 8 inches. When sketches, drawings, or tracings are furnished, they should be in ink, or if in pencil they must be fixed. Drawings on tracing paper are not received unless mounted on ordinary foolscap paper. Rough sketches are not accepted. When the design is to be applied to a set, each of the drawings accompanying the application, or the sketch, if a sketch is sent, should show all the various arrangements in which it is proposed to apply the design to the articles included in the set. When specimens of the design are furnished in lieu of drawings or photographs, they must be of such a nature as can be pasted into books; the dimensions of each specimen must not exceed 12 inches by 21 inches, and each must, when necessary, be mounted upon ordinary foolscap paper of the size above mentioned. Each representation of a design in Classes 13 and 14 should show the complete pattern and a portion of the repeat, and ought not to be of less size than 7 inches by 3 inches. Only two views of the same design will be accepted, unless in the case of a design for a set. Each view should be designated in writing (*i.e.* front view, side view). Both views should be on one and the same half sheet of foolscap paper.

A request for a search must be accompanied by two representations of the design to be searched for. Before delivery on sale of any article to which a registered design has been applied, the proprietor of the design must, if the

article is included in Class 13 or Class 14, cause each such article to be marked with the abbreviation "Regd.," and must, if the article is included in any of the Classes 1 to 12, cause it to be marked with the abbreviation "Rd.," and also, in the case of articles other than lace, with the number appearing on the certificate of Registration. It should be emphasised that the protection afforded to a registered design is restricted to the particular class or classes of goods in which the design is registered; that the same design may be registered in more than one class; and that in such case a separate application, together with three representations, is necessary for each class.

The following is a selection of the Designs Forms and of the Fees:—

Number of Form.	Title of Form.	Fee. £ s. d.
Designs No. 1	Authorisation	—
Designs No. 2	Application for Registration of Design, not being Lace and except Articles in Classes 8 and 13 to 15	0 5 0
„ „	Application for Registration of Design in Class 8	0 2 6
Designs No. 3	Application for Registration of Set of Designs, not being Lace	0 10 0
Designs No. 4	Application for Registration of a Design to be applied to Lace in Class 9	0 1 0
Designs No. 5	Application for Registration of Design to be applied to a Set of Lace Articles in Class 9	0 2 0
Designs No. 6	Application for Entry of Address for Service in Register	0 1 0
Designs No. 7	Request for Statement of Grounds of Decision under Rule 33	0 5 0
D. O. No. 1	Certificate of Registration	—
Designs No. 8	Extension of Copyright for Second Period	1 0 0
Designs No. 9	Application for Extension of Copyright for Third Period	0 10 0
Designs No. 10	Extension of Copyright for Third Period	1 10 0

Refusal to register.—Before the comptroller exercises any of his powers adversely to the applicant he must (if so required by the applicant within one month from the date of the comptroller's objection) give the applicant an opportunity of being heard personally, or by his agent, by sending the applicant ten days' notice of a time when he may be so heard. Within five days from the date when such notice would be delivered in the ordinary course of post, the applicant is required to notify the comptroller whether or not he intends to be heard on the matter. The decision of the comptroller in the exercise of any of his powers will be notified to the applicant. *Appeal.*—Where the comptroller's decision is not to register a design, the applicant is entitled to appeal to the Board of Trade; but to do so he must leave at the Patent Office, Designs Branch, within one month from the date of the decision appealed against, a notice of his intention. The notice must be accompanied by a statement of the grounds of the appeal, and of the applicant's case in support thereof. Directly this notice has been left with the comptroller, the applicant must send a copy thereof to the Secretary of the Board of Trade, No. 7 Whitehall Gardens, London. The Board of Trade will thereupon give such directions as they may think fit for the purpose of the hearing of the appeal. Seven days' notice, or such shorter notice as the Board of Trade may in any particular case direct, of the time and place appointed for the hearing of the appeal must be given by them to the comptroller and the applicant.

The Register of designs.—Upon the sealing of a certificate of registration there is entered in the register the name, address, and description of the registered proprietor, and the date upon which the application for registration

was received, which day is deemed to be the date of the registration. Where a person becomes entitled to the copyright, or to any share or interest therein, by assignment, transmission, or other operation of law, or where a person acquires any right to apply the design either exclusively or otherwise, a request for the entry of the name in the register as the proprietor of the design, or as having acquired such right, as the case may be, must be addressed to the Comptroller and left at the Patent Office. The person preferring such a request is called the claimant. Every request must be signed by the claimant or his agent. In the case of a firm or partnership, it must be signed by one or more members of the firm or his or their agent; and in the case of a company by its agent. The request must state the name, address, and description of the claimant, and the particulars of the assignment, transmission, or other operation of law by virtue of which it is made. It must also be accompanied by a statutory declaration to be written beneath it verifying the several statements therein, and declaring that the particulars above described comprise every material fact and document affecting the proprietorship of the design, or the right to apply the same, as the case may be, as claimed by the request. The comptroller may demand such further proof of title as he thinks necessary; and he may also, with the sanction of the Board of Trade, dispense with evidence. And *see* COPYRIGHT.

DETINUE is the technical name given to an action brought by the owner of goods for their recovery from some person who is wrongfully detaining them. The action is not in respect of the goods having been wrongfully taken out of the owner's possession, but only in respect of their wrongful detention. The claim in the action would be for the return of the goods or their value, and for damages for the detention. To succeed in such an action, the goods claimed must be of such an ascertained nature as to be specifically known and recovered; an action for detinue could not therefore be brought in respect of money, corn, and the like, for either of these could not be distinguished from any other property of the same class. But if goods of this class are in a distinguishable package the action may be brought. It is also necessary that the goods should have some value.

It often happens that the person who detains goods under such circumstances as might render him liable to an action for their recovery, does so because he believes he is not bound to deliver them up to the true owner. If he is right in his belief, the court would refuse to order him to deliver the goods up. Thus the pledgee of goods would have a good defence to an action for their recovery if he could show that the money lent to the owner upon their security had not been repaid. So a person who had a lien upon the goods would be entitled to retain them until the lien had been discharged. But in this connection it should be remarked that a defence to an action by the true owner of the goods would not be good which relied upon their having been pledged by some person who had no right to so deal with them; nor would it be a sufficient defence if the lien was valid only against some person other than the owner. Where, however, the circumstances of the transfer of the goods to the defendant were such as to give him the benefit of the provisions of the FACTORS (*q.v.*) Act, he would still have certain rights of detention as against the true owner of the goods; so he would in a case where the goods had originally been stolen from the true owner, but the defendant had bought them *bonâ fide* in MARKET OVERT. A lien would not be a good defence if the owner had previously tendered

the sum due and it had been refused; in such a case the party detaining the goods would be ordered to deliver them up upon payment of the sum due, and to pay the costs of the action to the plaintiff. Delivery of the goods after the action has been brought is so far a defence. But it is no defence for the defendant to merely set up the fact that he has lost the goods or sold them.

Goods not exceeding £15 value.—A person who claims to be entitled to the property in, or possession of goods not exceeding in value the sum of £15, and which property is wrongfully detained from him by another person, has, in London, a more convenient remedy than that afforded by an action for detinue in the High Court or County Courts. He may proceed summarily in a police court against the person detaining the goods, and the magistrate, if satisfied that they are wrongfully detained, will order them to be delivered up, having due regard to any charge or lien existing thereon. For the purpose of such a proceeding, dogs are deemed to be "goods."

DEVIATION is a term signifying an unnecessary or unexcused departure made by a vessel from the proper course of its voyage. In this sense the word is found in connection with contracts of affreightment and insurance. In the contract of **affreightment** there must be an express *permission* in order to justify a vessel deviating; and even where there is a permission it will, apart from express indication to the contrary, only extend to permit such a deviation as is consistent with the main object of the contract. Liberty to call at ports is only a permission to call at ports passed by the vessel in its voyage, and make any calls thereat in their geographical order. The voyage being fixed by the contract, it is the duty of the master to proceed to the port of delivery without delay and without any unnecessary departure from the direct or usual course. But circumstances may arise which render it *necessary* to depart from this usual course; tempestuous weather injuring the ship and rendering it necessary to put into a port of repair would be one of those circumstances; deviation may accordingly be justified by necessity. Other instances of such justifying circumstances which may be alluded to are the saving of life; and also of property, if thereby is the only way to save life. A vessel may also deviate to avoid capture. The legal consequences of a deviation are to make the shipowner liable for goods damaged or lost during the deviation, even though the real cause of the damage or loss is some peril of the sea in respect of which his liability is expressly excluded by the contract. And the shipowner is under a somewhat similar liability in respect of damage or loss occurring after the deviation.

In insurance, deviation has the same signification as in affreightment. Not only are the justifications or lawful excuses for a deviation the same, but the underwriter is generally discharged absolutely from his liability under the policy of insurance because of the deviation. For permission to deviate, the shipowner must look to the terms of the policy—the liberty therein granted for the ship to "touch," "trade," "call," or "touch and stay," as the case may be—and the course of the voyage must have strict regard to them. Though the deviation thereupon absolutely discharges the underwriter, it does not operate so as to relate back and discharge him in

respect of any loss which may have happened before the deviation. *See* AFFREIGHTMENT; BILL OF LADING; CHARTER-PARTY.

DEVISE.—When making a will, any one who desires to give any real property to another should be careful to use the word "devise." He should accordingly say, "I devise to C. D. my house," &c. Though in this sense the word is a verb, it is also used as a noun to describe the property itself thus given; the above gift could accordingly be referred to as a devise. The word devise being thus limited to a gift by will of real property, it follows that it should be clearly distinguished from the words "*bequest*" or "legacy," which are the technical terms applied to a gift by will of personal property, *e.g.* a horse. When giving a horse by will the testator should say "I bequeath," or "I give and bequeath." *See* WILL.

DILAPIDATED HOUSES. *See* APPENDIX.

DILAPIDATIONS.—When a person entrusts an article into the possession of another—whether on hire, deposit, or otherwise—with the understanding that it is to be eventually returned to its owner, the person with whom it is entrusted is expected to keep it in good condition, and in such condition to return it. Should the bailee return the article in a bad condition, he will be liable to compensate the bailor for the damage he has done to it. This is the rule generally with regard to the bailment of goods and chattels. And it extends to a letting of real property—a house or land for example; for the letting of such property to a tenant is in fact nothing but a special form of bailment. The term dilapidations is used more or less synonymously with the more technical legal term *waste*, to signify the spoil, destruction, or injury done to houses, woods, fences, lands, &c., by the tenant thereof, to the prejudice of his landlord or the person entitled to the reversion of the premises at the expiration of the tenancy. Waste is divided by lawyers into two classes, voluntary and permissive; the former class comprising acts of commission, the latter class being made up of acts of omission. Such acts as destroying any part of the premises, or altering them, or doing anything to them of a positive nature, would be instances of voluntary waste; but abstaining from action and standing by without interference, and thus allowing the elements and the inherent defects of the premises to work together for their accelerated injury or destruction would be permissive waste. No tenant may allow either of these classes of waste to operate to the damage of the premises; his duty is to keep them in good condition and repair, *fair use and wear* only excepted. Tear them he may not, for tear is really a dilapidation—voluntary waste; and should the phrase *wear and tear excepted* occur in a lease or tenancy agreement, it must be understood as meaning "use and wear."

In addition to the above two classes of waste could be added a third—malicious; and if it were within the scope of this work it would be possible to treat of waste from the point of view of tenants-in-tail, life-tenants and reversioners thereon, and other parties generally to be found in Chancery; but to do so would entail a complicated and extensive inquiry, and would, moreover, carry this article into wastes outside dilapidations. It is therefore sufficient for our purpose to deal with dilapidations as being in effect either voluntary or permissive waste, or both, and to confine our attention to ordinary yearly tenancies and leases. In passing, however, reference may be made to the liabilities of a *tenant-at-will*, who is a person occupying premises abso-

lutely at the will of the landlord, who may at any time eject him without notice. The liability of such a tenant is confined to paying his rent, and to making good wilful or malicious waste; he is not liable to compensate his landlord for dilapidations, and is consequently not bound to reinstate the premises should they be destroyed by falling or by fire—not even if the fire is the result of his negligence.

A yearly tenant is in almost as good a position as the tenant-at-will; he is under very similar obligations to those imposed upon a bailee in a mutual bailment, his liability being limited as a rule to the consequences of his own negligence. He is not liable for the consequences of a fair use and wear of the premises, though he must repair any windows, door, or other parts thereof which he damages or breaks. But he need only repair to a reasonable extent, or to one corresponding to the damage he has done, for he is under no obligation to prevent the natural decay and dissolution of the premises—he is not even liable for permissive waste. Subject to this the landlord is bound to do all repairs, both inside and outside. There may be exceptions to this rule in some parts of the country, the tenant being required to keep the premises wind and water tight, but in London and the greater part of the country the rule is certainly as we have stated it. A farmer, holding as a yearly tenant, is only bound to farm according to the custom of his county, and to keep the premises in fair and tenantable repair. In the case of low-rented houses, a landlord is under a statutory obligation, in certain circumstances, to let and maintain a house only in a habitable state of repair. (*See* Vol. I. p. 97.)

A lessee for years is in a somewhat different position to either of the foregoing. Broadly speaking he is, apart from contract, under a general liability for both voluntary and permissive waste. This general liability may lead to very extreme special instances; for example, having to give up the premises to the landlord at the end of his term, he is bound to rebuild them if they are burnt down, and to pay rent therefor during the whole period, notwithstanding the fact that they cannot be used by him when destroyed and whilst being rebuilt. But almost invariably the lease contains special covenants for repairs, and these will always determine the extent of the lessee's obligations in respect of dilapidations. To first refer to the covenants from the point of view of *repair generally*, attention should be paid to the definition and illustrations given above of voluntary waste. From these it naturally follows, and though it does so naturally, it yet at first sight seems somewhat strange, that for a lessee to pull down an old and decaying house and to build in its stead a new, better, and more convenient and valuable one, is not only a breach of his covenant to repair, but so grave a one as to possibly render him liable to the landlord for damages. So also would be the conversion of an outbuilding of no particular use or value, into a cottage having greater use and a higher value; or to convert two small inconvenient rooms into one good one; or to pierce a doorway through the wall of the premises. But had the aforesaid old house or outbuilding fallen down, the lessee would nevertheless have been required to rebuild it. A lessee under such a covenant is allowed, however, to make alterations in the nature of merely taking down partitions, enlarging windows, or opening external doors. The following phrases—*habitable repair*, *good repair*, *good and tenantable repair*, *tenantable repair*, *and substantial repair*, may be taken as each meaning the same thing, viz. that the lessee having taken possession of the premises when

the same thing, viz. that the lessee having taken possession of the premises when they were in a tenantable state, the repairs required to be done are limited to maintaining that state, having regard to the age and nature of the buildings, and do not extend to building a new house for the landlord. Unless there is anything in the lease to the contrary, the law always infers that the premises were in a tenantable state of repair when taken possession of by the lessee. If a lessee is under a covenant to repair *forthwith*, it will be sufficient if he does so within a reasonable time under all the particular circumstances of the case. If the lessee is under no express covenant to repair, he is only bound to preserve the premises from occasional and accidental dilapidations. He is not under any obligation to rebuild in the case of the premises being destroyed by the act of God, as by a tempest.

Assessment of dilapidations.—This is the inevitable incident of the termination of a leasehold tenancy; the tenant would probably not trouble about it, but that the landlord is most careful to see that he does. Some months before the expiration of the term, the landlord's surveyor pays a visit to the premises and inspects their condition; this visit the tenant can probably not decline, for he has been usually made to empower it in the lease. As a result of this visit the tenant is served by the landlord with a notice to repair. The tenant should then himself obtain the advice and assistance of a surveyor on his own behalf, especially if he feels that the landlord's demands are excessive. As a rule they are; but, on the other hand, the tenant has generally a far too modest idea himself of what the landlord should demand. And so the question of dilapidations is usually approached, from the beginning, by each of the parties in too grasping or grudging a spirit. The landlord wishes the tenant to put the house in such a state as will more than satisfy an incoming tenant; the tenant does not wish to do anything he is not bound to do. As a result there is considerable friction in questions of detail, and especially as to the true meaning and intent of any particular technical terms which may have been used in the lease. Apart from specific requirements of the lease, the landlord should not require anything more than that the premises should be delivered up in a condition which shows that the current repairs which the tenant was bound to do have been duly done, and that their effect has only been modified by the use and wear of the premises to which the tenant has been entitled since the time of the last of the current repairs. To such a requirement the tenant should have no objection; and in accordance therewith the landlord's surveyor should make his inspection and report upon the following basis: (*a*) What the nature of the current or periodical repairs were, and at what time the tenant ought to have performed them; (*b*) what the repairs are that the tenant must perform at the termination of his tenancy; (*c*) what damage the landlord has sustained for the non-performance, if any, of the current or periodical repairs. As a rule, however, the surveyor estimates the *primâ facie* or superficial repairs, and then adds to them the extraordinary or base repairs. He estimates for example the cost of painting the ironwork, and to that he adds the cost of renewing that part of it which has decayed from want of paint. On broad and equitable principles, the landlord's claim should not require the tenant to build him a new house, or to put it in a condition from which it may have fallen many years before the tenant commenced his tenancy; the tenant, on the other hand, should deliver up

possession of it in a condition that would be good enough for himself, considered as a reasonable man, until the time would have arrived for the next periodical reparation if the tenancy has continued. The principle of the assessment once established, the valuation of the actual work presents no difficulty and can easily be agreed upon by the surveyors.

It is frequently the case that the landlord appends to his notice to repair an intimation that the tenant may pay a certain sum in satisfaction. It will be the wiser course for the tenant to pay, or to tender the amount he thinks fair, and not to repair. If he repairs, he must do so during the remainder of his term, and has to suffer the inconvenience of their superintendence and difficulties and disputes as to price with those whom he employs himself. If he should pay instead of repair, it will be wise for him to obtain a complete discharge from the landlord, precluding the possibility of his being subsequently charged a further sum in respect of the time during which the repairs are being performed, and the premises consequently vacant to the landlord's loss.

Periodical repairs.—Such repairs are those which a lease requires to be performed at stated intervals—every three or five years and so forth. These should always be done at the proper time by the tenant, even if the landlord takes no notice at the time of the non-performance. For one thing it should be remembered that the progress of disrepair and decay is always an accelerated one, and what may be a small matter now may easily be great and most expensive later on. Again, the due performance of these repairs during the currency of the term makes it more difficult for a landlord to require and obtain more than he is entitled to in the way of repairs at the end of the term. Landlords are not unknown to allow temporary neglect of this nature on the part of their tenants in order to make a profit, as a result thereof, upon the final assessment of the dilapidations. Apart from this, the landlord may at any time have resort to the law, and the tenant may then incur very heavy penalties and costs as the consequence of his neglect.

It often occurs, especially in London, that the landlord mulcts an outgoing tenant very heavily in the matter of dilapidations, and then requires the incoming tenant to himself, and at his own cost, place the premises in proper repair. Of course, where there is a greater demand for premises of a particular class than there is a supply of them, the proposing tenant is in the landlord's hands. But notwithstanding this fact, he should do his best to escape this initial liability, or at any rate to obtain such a decrease on his rent as will repay it. This may be easily calculated. *See* LEASE; LANDLORD AND TENANT.

DIRECTORS are the agents of the shareholders to direct and manage the affairs of a joint-stock company. They are not trustees, strictly speaking, and the rights and liabilities of trustees do not consequently constitute a true criterion of those attaching to the office of a director. But though this fact is always pushed forward by a promoter when he is endeavouring to obtain the consent of any one to act as a director, and is said to be a reason why the proposed director should not hesitate too much in giving his consent, it is after all a fact which, if anything, should more often than not cause the person approached to hesitate once for all and decline the office. The

business of a trustee is rarely very complicated, and the law relating to his position is very clearly defined and easily to be ascertained. On the other hand there can hardly be any business more complicated in its constituents or in its general subjection to the control of others than that which a director is called upon to transact. And to this complication must be added the fact that the law on the subject generally is in a state of uncertainty, and, so far as it is contained in the statutes, in a state of confusion. But out of all this mass of uncertain and confused law there stands out very clearly, sufficiently so to be a warning impossible to be ignored, a long ist of heavy penalties, to any of which a negligent or unbusinesslike director may become personally liable. And yet in spite of this may be found a large proportion of directors whose essential and avowed characteristics are negligence and unbusinesslike conduct in the office to which they have been appointed, and in respect of which they are generally handsomely paid. They have neither a general business capacity nor even the saving grace of the knowledge of some special business; their only capacity is a rapacity for fees. With the graces, however, they are more liberally endowed, but unfortunately their faith, hope, and their charity are merely the buttresses and expressions of a negligence almost, if not absolutely, criminal.

There was recently before the courts, for the purpose of winding up a company, an investigation into its business and speculations. In this company the public would appear to have lost over its shares nearly five millions of money, whilst another company, intimately associated with it, showed a loss to the public of another five millions. The directors were for the most part men of distinguished position, and hitherto of irreproachable character, and yet facts such as the following came to light. One director openly stated in court that though he had received £4250 in fees yet he knew nothing of finance, and that as far as he could ascertain his only duty was to sign his name many thousands of times to share certificates! And this is only typical of the attitude adopted by an extremely large class of directors; they seem to ignore entirely their responsibilities, and to be unaware of the risk they incur of being very sharply and effectively pulled up by the law. "Directors," said Sir George Jessel, "are called trustees. They are no doubt trustees of assets which have come into their hands or which are under their control."

Appointment of directors.—It is usual for the articles of association to appoint the first directors, to fix their necessary qualification, and to determine their number. If the articles do not appoint the directors, they are provided for by certain clauses in Table A. By this table the power of appointing and determining the number of the first directors is vested in a majority in writing of the subscribers to the memorandum of association, and until such appointment has been made the subscribers are constituted by statute the directors of the company. The directors or managers, or the managing director alone, may be appointed and accept office with unlimited liability, and, by special resolution, a limited company may at any time, if so authorised by its articles, render unlimited the liability of its directors or manager, or of any managing director. In order that an appointment of directors by the articles of association may be effective, there are certain provisions contained in the Companies Act of 1908 which must first be com-

plied with. A person is not capable of being appointed a director of a company by the articles of association, and must not be named as a director or proposed director in any prospectus issued by or on behalf of the company, or in any statement in lieu of a prospectus filed by or on behalf of a company, unless certain documents have been signed by himself, or by his agent authorised in writing, before the registration of the articles or any publication of the prospectus, or filing of the statement, as the case may be. The following are the required documents: (1) A consent in writing to act as such director, which must also have been filed with the registrar of joint-stock companies; (2) (*a*) The memorandum of association duly subscribed by him for a number of shares not less than his qualification (if any); or (*b*) a contract in writing to take from the company and pay for his qualification shares (if any), and which contract must have been filed with the registrar. When the company is being registered, the applicant for the registration is required to deliver to the registrar at the same time a list of the persons who have consented to be directors of the company; should the list contain the name of any person who has not so consented, the applicant will be liable to a fine of £50. It should be noted that the requirement for directors to sign and file the above documents has no application to a private company, *i.e.* to one which does not issue any invitation to the public to subscribe for its shares, nor does it apply to a prospectus issued by or on behalf of a company after the expiration of one year from the date at which the company is entitled to commence business.

Where the directors of a company are not appointed by the articles, but are those provided by the provisions of Table A, there is no absolute necessity to appoint them at the statutory meeting—the general meeting of the company—which is required to be held within a period of not less than one month nor more than three months from the date at which the company is entitled to commence business. The proper time for the election of directors is at the first general meeting of the company in every year. If there should be any dispute as to the propriety of the election of directors, the proper course to be adopted by those who desire investigation, confirmation, or rescission, is to call a further general meeting to settle the matter; it is of no use to approach the court, for the law declines to interfere with regard to the domestic affairs of a company. If there is a contract, to which the company is a party, providing for the employment of a particular person as managing director, and the company declines to carry out its contract and appoint him, it cannot be forced to do so; nor will the court, under any circumstances, enforce the appointment and employment of any person as a director whom the company declines to accept. If there are no directors appointed by the articles, the subscribers to the memorandum acting consequently for the time being as such, the latter may appoint directors in writing, without a meeting, provided the document of appointment is signed by a majority of them all; but if they appoint by a meeting, it must be by one of which reasonable notice has been given to each of them—say two days' notice at least—and one attended by at least a majority of their whole number.

Qualification.—The Companies Act, 1908, does not anywhere impose an obligation upon a director to qualify for his office by taking shares in the company. If Table A is adopted in place of articles, there will not be found any provision for a qualification, and it will be therefore necessary to

modify it in that respect where a qualification is desired to be imposed. As it is generally considered wise and prudent for a director to be possessed of some share and interest in the company he is supposed to be managing, there is usually a provision to that effect in the articles.

It is the duty of every director who by the regulations of the company is required to hold a specified share qualification, and who has not already qualified, to obtain his qualification within two months after his appointment, or such shorter time as may be fixed by the regulations of the company. His office as a director will be vacated if he does not within two months from the date of his appointment, or within such shorter time as may be fixed by the regulations of the company, obtain his qualification, or if after the expiration of that period or shorter time he ceases at any time to hold his qualification. A person whose office is vacated under these circumstances is incapable of being reappointed a director of the company until he has actually obtained his qualification. If after the expiration of the above period, or shorter time, any unqualified person acts as a director of the company, he is liable to pay to the company a **penalty** of £5 for every day during which he so acts. The acts of a director or manager are valid notwithstanding any defect afterwards discovered in his appointment or qualification. A list of directors must be sent to the registrar. Every prospectus issued by or on behalf of a company, or by or on behalf of any person who is or has been engaged or interested in the formation of the company, is required to give a large and varied amount of information to the public. This information includes certain matters referring to its directors, which are as follows: (1) The number of shares, if any, fixed by the articles of association as the qualification of a director, and any provision in the articles of association as to their remuneration; (2) the names, descriptions, and addresses of the directors, or proposed directors; and (3) the minimum subscription on which the directors may proceed to allotment, and the amount payable on application and allotment on each share; and in the case of a second or subsequent offer of shares, the amount offered for subscription on each previous allotment, and the amount actually allotted; and the amount, if any, paid on these shares.

But the two first requirements would be unnecessary in the case of a prospectus issued one year after the date upon which the company is entitled to commence business; and so also, under the like circumstances, would the important requirement (4). This insists upon the inclusion in the prospectus of full particulars of the nature and extent of the interest, if any, of every director in the promotion of or in the property proposed to be acquired by the company, or, where the interest of such a director consists in being a partner in a firm, the nature and extent of the interest of the firm, with a statement of all sums paid or agreed to be paid to him in cash or shares by any person, either to qualify him as a director, or, otherwise for services rendered by him in connection with the promotion or formation of the company. In the event of non-compliance with any of the above four requirements, a director or other person responsible for the prospectus does not incur any liability by reason of the non-compliance if he can prove that—(*a*) as regards any matter not disclosed he was not cognisant thereof; or (*b*) the non-compliance arose from an honest mistake of fact on his part. But in the case of requirement (4), no director or other person incurs any liability in respect of the non-compliance unless it be proved that he had knowledge of the matters not disclosed.

It should never be forgotten by those who fill the office of a director, or who are likely to do so, that it will constitute a gross **breach of trust** on their part if they should accept their qualification as a present from the promoter. By doing so they become, in effect, his henchman; nor do they escape from that position or from the liabilities which are incident to it by paying for the shares themselves, and taking an indemnity from some third party against any loss in respect thereof.

Retirement of directors.—Where there are no articles of association, it is provided by Table A that all the directors shall retire from office at the first general meeting, and one-third, or the number nearest to one-third, in each successive year. In articles, however, the provision for retirement is usually that one-third, to be ascertained by ballot, shall retire at the first general meeting, and afterwards those who have held office for the longest period. There are also to be very frequently found provisions that one or more of the directors shall be permanent, or shall retain their office for a certain specified period of time; it is to managing directors and chairmen that such provisions as these are usually applied. There are conditions that vacate a director's office without the necessity for resignation; of such are lunacy, bankruptcy, composition with creditors, disqualification, or non-attendance during a certain time at the board meetings. On this question reference should always be made to Table A or to the articles of association; and in particular it should be noticed whether, and if so under what conditions, a director has liberty to enter into contracts on his own behalf with the company; for apart from the terms and conditions of any special provision hereon, such conduct by a director will vacate his office. Apart from any special condition in the articles of any company, the disqualification of bankruptcy does not extend so far as to prevent a person already a bankrupt accepting and lawfully filling the office of a director. Disqualification as a cause of retirement is referred to above under the heading of qualification. Retiring directors are eligible for re-election, and any casual vacancies, such as one arising from bankruptcy, may be supplied by the appointment of the other directors; but the new director so appointed only holds office for the time unexpired of the term of the director whose place he has taken.

Allotment of shares.—By the Stamps Act *every person* who executes, grants, issues, or delivers out any document chargeable with duty as a letter of allotment, letter of renunciation, or scrip certificate, or as scrip, before the same is stamped with a sixpenny stamp, forfeits a penalty of £20; and again, if a share warrant is issued without being duly stamped, the company issuing the same, and also every person who at the time when it is issued is the managing director or secretary, or other principal officer of the company, is liable to a **penalty** of £50.

Directors have power to make an allotment of the share capital of a company offered to the public for subscription, only upon the following conditions: (*a*) That the amount, if any, fixed by the memorandum or articles of association and named in the prospectus as the minimum subscription upon which they may proceed to allotment has been subscribed; or (*b*) if no amount is so fixed and named, then the whole amount of the share capital so offered for subscription has been subscribed. Not only must there have been this subscription, but the sum payable on application for the

Photo: Elliott & Fry

A. LASENBY LIBERTY, born 1843, who is now following the life of a country gentleman, is the head of Liberty & Co. of Regent Street, London, whose specialities in "Liberty" art fabrics and Eastern productions have been one of the chief factors in the revolution of English taste.

Photo: Elliott & Fry

C. ARTHUR PEARSON, originally one of Sir George Newnes' young men, started *Pearson's Weekly*, and now owns the *Daily Express* and many other papers. His success as a publisher of newspapers has been phenomenal, while in politics he has rendered great service to the Tariff Reform movement. Born 1866.

HON. W. F. D. SMITH is the son of the Right Hon. W. H. Smith, and a partner in the well-known newspaper firm which has its head-quarters in the Strand and its representatives and branches in almost every town in England. It is perhaps one of the most extensive organisations for the distribution of newspapers in the world.

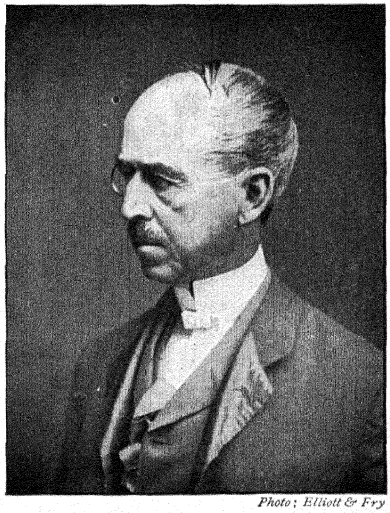


Photo: Elliott & Fry

SIR WALTER GILBEY, Bart., born 1831, knows as much about horses as about the wines and spirits his firm sell. He was the pioneer of inexpensive wines, and, having made a fortune at it, he took the hackney horse under his fostering care. He manages an agricultural charity and the "Whit Monday" Cart-Horse Parade. Baronet 1893.

SUCCESSFUL BUSINESS MEN

amount fixed and named, or for the whole amount offered for subscription, must have been paid to and received by the company. The amount so fixed and named, and the whole amount so offered, must be reckoned exclusively of any amount payable otherwise than in cash, and is always referred to as the "minimum subscription." The amount payable on application on each share may not be less than 5 per cent. of the nominal amount of the share. Should these conditions not have been complied with on the expiration of forty days after the first issue of the prospectus, all money received from applicants for shares must be forthwith repaid to them without interest. If the money is not so repaid within forty-eight days after the issue of the prospectus, the directors of the company are jointly and severally **liable** to repay that money with interest at the rate of 5 per cent. per annum from the expiration of the forty-eight days; but a director can escape this liability if he proves that the loss of the money was not due to any misconduct or negligence on his part. Any condition requiring or binding any applicant for shares to waive compliance with these requirements would be void. Except as to the minimum amount payable upon application for shares, the foregoing requirements do not apply to any allotment of shares subsequent to the first allotment of shares offered to the public for subscription. The practical result of these requirements of the law is that directors fix the smallest amount possible as that upon which they will go to allotment; there is nothing to prevent them fixing a merely nominal amount.

Should a company make an allotment of shares in contravention of the foregoing requirements, the allotment will be voidable at the instance of the applicant within one month after the holding of the statutory meeting of the company and not later, and it will be so voidable notwithstanding that the company is being wound up. If a director knowingly contravenes or permits or authorises the contravention of any of the foregoing requirements with respect to allotment, he will be **liable** to compensate the company and the allottee respectively for any loss, damages, or costs which the company or the allottee may have sustained or incurred thereby. But proceedings to recover such loss, damages, or costs cannot be commenced after the expiration of two years from the date of the allotment. To creditors of a company these provisions are very important, for until one month after the company has held its statutory meeting they do not know whether there will be in fact a body of shareholders really partners in the company's business and liable to contribute towards its debts.

The conditions in regard to an allotment in the case of a company not issuing an invitation to the public to subscribe are different to the foregoing, which also do not apply in the case of a private company. The subject of this article, however, is a company issuing a public invitation to subscribe.

Within one month after allotment has been made, the company must file with the registrar—(*a*) a return of the allotments, stating the number and nominal amount of the shares comprised in the allotment, the names, addresses, and descriptions of the allottees, and the amount (if any) paid or due and payable on each share; and (*b*) in the case of shares allotted in whole or in part for a consideration other than cash, a contract in writing constituting the title of the allottee to such allotment, together with any contract of sale, or for services or other consideration in respect of which such allotment was made, such contracts being duly stamped, and a return

stating the number and nominal amount of shares so allotted, the extent to which they are to be treated as paid up, and the consideration for which they have been allotted. Any director, manager, secretary, or other officer of the company, who is knowingly a party to making default in compliance with these requirements, is liable to a **penalty** not exceeding £50 for every day during which the default continues. Every prospectus issued by or on behalf of a company, or by or on behalf of any person who is or has been engaged or interested in the formation of a company, must include, amongst other matters, a statement of the following facts: The contents of the memorandum of association, with the names, descriptions, and addresses of the signatories, and the number of shares subscribed for by them respectively; also the number of founders' or management shares, if any, and the nature and extent of the interest of the holders in the property and profits of the company. Default in compliance herewith imposes a **liability** upon a director of the same character as that set out in p. 135 as incidental to the reference in the prospectus to the qualification of a director. It is also incumbent upon the directors to certify a report, which has to be sent to the shareholders before the statutory meeting, in which are set out full particulars of the allotment. And the directors must also produce a list of the shareholders, with their holdings, at and for their inspection at the statutory meeting.

Subject to the above provisions, the allotment of the shares is absolutely in their hands and at their discretion; but this discretion must be exercised *bonâ fide*, not for example by allotting shares to their infant children, or to such children of either of them. Though there need not be a full board present at the allotment, yet every director must have notice of the meeting, otherwise the allotment will be bad. Should an allotment be made by an insufficient board, it will be invalid but capable of ratification by a properly constituted board meeting subsequently held, and such a ratification will relate back to the original allotment so as to bind the allottee, even though he has in the meanwhile withdrawn his application.

Management.—*Board meetings.*—The shareholders having appointed their directors to manage the affairs of the company in their collective capacity, it follows that the whole board is the real agent of the company. Though it is usual to hold the meetings of the board at the head office of the company, there is nothing to prevent the directors lawfully meeting to transact their business at any other place. But each director must always have notice sent to him of the time and place of the meeting, though the notice need not state the nature of any special business intended to be done. When in a properly constituted meeting, the directors may act by a majority of their number, but they cannot declare a quorum apart from any power in that behalf conferred upon them by the articles of association.

The special powers to be exercised by the directors are found in the Acts, and also, so far as they relate to a particular company, in its articles. But as a rule there will be found in the articles one which follows the lines of a clause in Table A, and which provides that the directors may exercise all the powers of the company not by the articles or by the Acts expressly directed or required to be exercised by the company in general meeting. Under such a power the directors can in fact do everything that the company can. Directors who act in excess of their powers or authority are personally liable

for those acts. *Fees* are not payable to a director by way of remuneration, except by special contract with the company, or in accordance with the provisions of the articles of association, or when the office is accepted with the understanding that a power reserved in the articles for payment of remuneration to a director will be exercised in his favour. When payable, he is entitled to draw them, notwithstanding the fact that the company is not making any profit, and that they are taken out of its capital. Fees may be from time to time voted to directors by the company, but such fees are really gratuities. We have already seen that unless the prospectus is issued one year after the date upon which a company is entitled to commence business, it must contain full particulars of the provision in the articles of association as to the remuneration of its directors. A director may sue for the remuneration which the company has agreed to pay him, and may also prove for any arrears in the winding-up; but should he vacate office during the course of a year, he loses his remuneration for the part of the year he has served, when his remuneration is payable yearly.

Accounts.—It is an important part of the duties of a director to keep clear and proper books of account of the receipts, payments, and transactions of the company. They must also prepare and lay before the company, once at least in every year, the annual summary or full account of the expenditure and income of the company, and also its balance-sheet. In the meantime the books of account must be open to the inspection of the shareholders. But as a rule the articles assume to take away this right, but they cannot take away the right to inspect the register of members or the register of mortgage. Should the directors fail to keep proper accounts, and as a consequence pay any dividends out of capital instead of out of profits, they will be jointly and severally **liable** to personally repay the same to the company. There may also be a further **liability** which will be referred to later on when dealing with the misfeasance of directors. But it will be convenient to here set out a **criminal liability** to which directors are subject in the circumstances next to be related.

Should a director of any body corporate or public company fraudulently apply to his own use and benefit any property of that body or company, he may be convicted of a misdemeanour. So he may if he receives or possesses himself of property of such a body or company otherwise than in payment of a just debt, and with intent to defraud, or omits to make a full entry thereof in the books of the body or company. And so also if, with intent to defraud, he destroys, alters, mutilates, or falsifies any book, paper, writing, or valuable security, or makes or concurs in making any false entry, or omits or concurs in omitting any material particulars in any book of account or other document. It will also be a misdemeanour if he should make, circulate, or publish any written statement which he shall know to be false in any material particular, with intent to deceive or defraud any member, shareholder, or creditor; or to induce any person to become a shareholder or partner therein, or to entrust or advance any property to the body or company, or to enter into any security for the benefit thereof.

Auditing and balance-sheet.—Where there are any auditors to the company, the directors are bound to give particulars of their names and addresses in the report required to be sent to the shareholders prior to the statutory meeting. This report must, so far as it relates to the shares allotted by the

company, and to the cash received in respect of those 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. A copy of the report, certified also, must be then filed with the registrar. The names and addresses of the auditors, if any, must also be set out in the prospectus. After the company has once started operations, and survived the statutory meeting, *it must* at each annual general meeting *appoint an auditor* or auditors to hold office until the next annual general meeting. Should it fail to do so, the Board of Trade will supply the omission upon application being made to it by any member of the company. A director or officer of the company is not capable of being appointed auditor of the company. The directors have themselves the power to appoint auditors before the statutory meeting, but auditors so appointed can hold office only until the first annual general meeting; and the shareholders have a right at any time before then to remove them by a resolution in general meeting and to appoint others in their stead. The directors may fill any casual vacancy in the office of auditor, but while any such vacancy continues the surviving or continuing auditor or auditors, if any, may act. The remuneration of auditors is fixed by the company in general meeting, except that of those appointed before the statutory meeting, or to fill any casual vacancy. In either of the latter cases it is for the directors to fix their remuneration.

Every auditor of a company has a right of access at all times to the books and accounts and vouchers of the company. The auditors are also entitled to require from the directors and officers of the company such information and explanation as may be necessary for the performance of their duties, and they must sign a certificate at the foot of the balance-sheet stating whether or not all their requirements as auditors have been complied with. They must also make a report to the shareholders on the accounts examined by them, and on every balance-sheet laid before the company in general meeting during their tenure of office. In every such report they are bound to state whether, in their opinion, the balance-sheet referred to in the report is properly drawn up so as to exhibit a true and correct view of the state of the company's affairs as shown by the books of the company; and this report must be read before the company in general meeting.

False statement.—Should any person—and this would include a director—in any return, report, certificate, balance-sheet, or other document required by or for the purposes of the Companies Act, 1908, wilfully make a statement false in any material particular, knowing it to be false, he will be guilty of a **misdemeanour**, and liable on conviction or indictment to imprisonment for a term not exceeding two years, with or without hard labour, and on summary conviction to imprisonment for a term not exceeding four months, with or without hard labour, and in either case to a fine in lieu of or in addition to the imprisonment. But no fine imposed on summary conviction can exceed £100.

Directors and Auditors.—Because auditors are employed who are professional accountants, and therefore necessarily experts in figures, accounts, and balance-sheets, the directors are not thereby relieved from their original responsibility. That responsibility cannot be evaded by them or thrown upon the shoulders of others. Whatever may be the professional eminence of the auditors, however complicated and technical may be the accounts of a

particular company, the directors are yet responsible therefor, and to satisfy the requirements of the law they must bring to bear upon the reports of the auditors the full weight and the usual judgment of business men. To take up a position similar to that taken up by the distinguished gentleman to whom reference has been made at the commencement of this article, is to run the risk of both civil and criminal liability.

Misfeasance.—A director may not spend money belonging to the company in rigging the market; nor in paying dividends out of capital; nor for purposes which are outside those for which the company exists; nor in bribing a banker to open an account; nor in purchasing the company's own shares. To do any of these things is to be guilty of a misfeasance, and to render himself personally liable to repay the money to the company. Nor, subject to like consequences, may he sign cheques without knowing the purpose for which they are payable; nor, generally speaking, may he use the funds of the company for any purposes other than those for which they were contributed. With respect to the payment of dividends out of capital, all the directors are jointly and severally liable. As distinguished from misfeasance, directors are liable for acts of *non-feasance*, or in other words, acts of such extreme negligence as would render them liable to an action. Examples of such acts are not suing for debts, and neglecting to make calls. They may also be liable for their *misconduct*. As directors of a company, they must conduct themselves in its affairs with the same amount of integrity as would be expected from any agent whilst acting on behalf of his principal. And in this connection their position is also somewhat analogous to that of a trustee. They must be careful not to place themselves in such a position as to have an interest adverse to that of the company; if a director finds himself in such a position he should immediately extricate himself, or fully disclose it to the company, or retire from his office. If he is interested as a vendor, for example, in the sale of property to his company, he must adopt a course consistent with the foregoing rule. Should he not do so, the company, upon discovering the true facts, has the option of repudiating the transaction. He must not make a secret profit out of his company; still less may he take a bribe or a secret commission. Where there is a probability of directors having personal dealings with the company, the articles of association should clearly state the conditions and limitations under which they are to be carried out.

Penalties.—To conclude, it will not be useless, even at the cost of some repetition, to enumerate some of the penalties to which directors are liable. They appear in various forms, such as civil liability to the company, to individual shareholders, to the Government, and criminal liabilities, and are imposed in respect of: acting without a qualification; contravening the statutory requirements as to allotment; issuing an unstamped letter of allotment; non-compliance with statutory requirements as to the annual list and summary; a false balance-sheet under the Companies Act, 1908; the like under the Larceny Act; not signing the balance-sheet of a banking company; borrowing without regard to statutory provisions; publishing and circulating false reports; commencing business before statutory requirements have been complied with; delivering debentures without indorsement of copy of registrar's certificate; false entries or documents under the Act of 1908; the like under the Larceny Act; falsification of accounts and books under

the Act of 1862; the like under the Larceny Act; neglecting to report to the registrar any increase of capital; omitting to make out and exhibit the statement required from banking companies, provident societies, and so forth; mutilating books under the Act of 1908; the like under the Larceny Act; not affixing the true name of the company—including the word "Limited"—to documents; omitting to enter up the books, under the Larceny Act; neglecting the statutory regulations as to the prospectus; perjury; neglecting to take up the qualifying shares; concealing the name of creditors entitled to object to a reduction of capital; misrepresenting the amounts and nature of their debts; not inserting a proper note of the reduction in the memorandum; not keeping register of directors; omitting to send a copy of it to the registrar; not keeping register of members; refusing inspection thereof; refusing to supply extracts therefrom; not keeping register of mortgages; refusing inspection thereof; not inserting a proper note of subdivision of shares in the memorandum; issuing unstamped share warrants; failure to register debentures; not registering special resolutions; and supplying Articles of Association without a copy thereof. Besides these there are the ordinary common law civil and criminal liabilities —an action for deceit, a prosecution for conspiracy as examples.

Then also, to conclude, their liabilities should be emphasised from the point of view of their being trustees. To quote Lords Justices Lindley and Kay, though they are not, properly speaking, trustees, yet they have always been considered and treated as trustees of money which comes to their hands, or which is actually under their control, and ever since joint-stock companies were invented directors have been held liable to make good monies which they have misapplied, upon the same footing as if they were trustees. When they get assets of a company under their control or into their hands and deal with them in a way which is beyond the powers of the company, they are liable for a breach of trust, and may be proceeded against under the Trustee Acts. *See* also COMPANIES; ARTICLES OF ASSOCIATION; MEMORANDUM OF ASSOCIATION; PROSPECTUS; and other articles therein referred to.

DISCHARGE OF CARGO.—All imported goods upon their importation into the United Kingdom are required to be entered and landed within twenty-one days, exclusive of Sundays and holidays, after the arrival of the ship, or such further period as the Commissioners of Customs may direct. In default thereof the Customs officers may convey the goods to the King's warehouse; if the principal portion of the cargo has been discharged within time, the remainder is to be transferred thereto. Small packages or quantities of goods may be conveyed to the King's warehouse at any time after the arrival of the ship, to remain there for the remainder of the prescribed time. If the duties on the goods are not paid, together with the charge of removal, warehouse rent, &c., within three months afterwards, or within such further period as the commissioners may direct, the goods may be sold and the proceeds applied in discharge of duties, freight and charges, the overplus, if any, being paid to their owner. If the goods are of a perishable nature, the sale may take place forthwith and the proceeds be applied in like manner. In case the goods cannot be sold at a sufficient sum to pay the duties and charges if ordered for sale for home consumption, or the charges if for exportation, they may, at the direction of the commissioners, be

destroyed. The Customs officer having the charge of the goods will refuse delivery thereof from the King's warehouse or other place of deposit until proof has been given to his satisfaction that the freight due thereon has been paid. If the ship and goods are liable to perform QUARANTINE (*q.v.*), the time of entry and landing is computed from the day of release from quarantine.

No goods (except diamonds, bullion, lobsters, and fresh fish of British taking, imported in British ships, which goods may be landed without report or entry) are allowed to be unshipped from any ship arriving from parts beyond the seas, or landed or put on shore on Sundays or holidays, except between certain specified hours. No goods can be unshipped or landed except in the presence or under the sanction of the proper Customs officer. Nor can any goods be so landed, except at some legal quay, wharf, or other place duly appointed for the landing or unshipping of goods, nor be transhipped into any other boat or craft previously to their being landed, unless by the officer's permission. If any goods unshipped or removed from any importing ship for the purpose of being landed are not removed at once, and landed at the wharf or other place at which they are intended to be landed, or are dealt with contrary to the Customs regulations, they will be forfeited, together with the barge or other vessel removing them. And *see* LANDING AND ENTRY.

DISCLAIMER is a renunciation or disavowal, as where a patentee renounces part of the subject-matter of his invention, or a person in possession of an estate denies that he holds of a person who claims to be the owner. In English law the term is most usually met with in respect to bankruptcy, landlord and tenant, trustees, and patents.

In bankruptcy, the trustee is not bound to take over any part of the bankrupt's property, consisting of land burdened with onerous covenants, of stock or shares in companies, of unprofitable contracts, or of any other property which is unsaleable, or not readily saleable, on account of its owner being bound to perform any onerous act or to pay any money. But he must formally disclaim the property by writing, signed by him; and he must do so within twelve months from the date of his first appointment as trustee. This period of twelve months may be extended by the court. Such a disclaimer only affects the rights or liabilities of other persons so far as is necessary for the purpose of releasing the bankrupt and his property, and the trustee, from liability. Any one injured by the operation of a disclaimer is considered to be a creditor of the bankrupt to the extent of the injury, and can accordingly prove to the extent thereof as a debt under the bankruptcy. A lease can be disclaimed by the trustee only by leave of the court, except in the following cases: (1) Where the bankrupt has not sub-let the premises, or any part thereof, or created a mortgage or charge upon the lease; and (*a*) the rent reserved and real value of the premises, as ascertained by the property tax assessment, are less than £20 per annum; or (*b*) the estate is being administered as a small bankruptcy; or (*c*) the trustee serves the lessor with notice of his intention to disclaim, and the lessor does not within seven days after receipt of the notice give notice to the trustee, requiring the matter to be brought before the court; or (2) where the bankrupt has sub-let the premises, or mortgaged or charged the lease, and the trustee serves the lessor and the sub-lessee or the mortgagees with notice of his intention to disclaim, and neither the lessor, nor the sub-lessee, nor the mortgagees, nor any of

them, within fourteen days after receipt of the notice, require or requires the matter to be brought before the court.

Any one interested in the property, and desirous of knowing with certainty and as speedily as possible how he will be affected by bankruptcy, may apply to the trustee requiring him to decide whether he will disclaim or not. The trustee must thereupon decide within twenty-eight days from the application whether he claims or not, or he will forfeit his right of disclaimer. In the case of a contract, if the trustee does not decide within that time he will be deemed to have adopted it. By neglecting to disclaim within the twenty-eight days a trustee may render himself personally liable for rent and costs. The court also has power to rescind contracts and vest disclaimed property in those persons entitled thereto. It may also modify the terms before-mentioned as to the vesting of leasehold property, so as to subject the person in whose favour any such property is vested to only the same liabilities and obligations as those to which he would have been subject if the lease had been assigned to him at the date when the bankruptcy petition was filed. A trustee must at once file the disclaimer with the court when he disclaims any leasehold property. Persons who think they are entitled to force the trustee to disclaim should be careful to ascertain the position of affairs before they require him to apply to the court for leave to do so; the court makes it a rule to only pay their costs out of the bankrupt's estate when it is satisfied that the application was necessary to do justice between the parties.

Landlord and tenant.—Should a tenant—weekly, monthly, quarterly, or yearly—repudiate his relationship as such tenant to his landlord, that repudiation will operate as a disclaimer of his tenancy, and will prevent him setting up the omission of a notice to quit as a defence to an action brought by the landlord for his ejectment. But the repudiation must be of so specific a nature as to warrant a legitimate inference that the tenant has in fact disclaimed.

Trustees.—Where a trustee, either an original or a substituted one, and whether appointed by a will, deed, the court, or otherwise, desires to be discharged from the trusts or powers reposed in or conferred on him, then the person nominated for the purpose of appointing new trustees by the instrument, if any, creating the trust may appoint another person to be a trustee in his stead. The appointment must be in writing; and if there is no person nominated by the instrument to appoint new trustees, the appointment may be made by the surviving or continuing trustees or trustee for the time being, or their personal representatives. An estate remains vested in a trustee up to the instant of his refusal to act or disclaimer; immediately upon the disclaimer, and without the necessity for any formal act, he ceases to exist as a trustee. Though no formal act is necessary for a disclaimer, and it may be evidenced only by conduct and without even any express declaration, it is yet advisable that the disclaimer should be made by a deed. A trustee cannot disclaim only a part of his trust.

Patents.—In an action for infringement, and in a proceeding for revocation of a patent, the patentee may, at any time, obtain an order from the Court, giving him leave to amend his specification by way of disclaimer, the trial of the action being in the meantime postponed. When a disclaimer has been allowed, no damages are given in any action in respect of the use

of the invention before the disclaimer, unless the patentee establishes to the court that his original claim was formed in good faith and with reasonable skill and knowledge.

DISCOUNT is, strictly speaking, that allowance which is paid in respect of the immediate advance of a sum of money not due until a future date. The word is used in several technical connections with, in each case, a somewhat varying signification. When used in connection with the sale of goods —discount on sale—or with a customary trade allowance, its signification may be fairly said to come within the terms of the above definition, though perhaps the actual allowance made is only an approximation towards a precise discount. In many trades—the hardware trade for example—goods are sold by the manufacturer or merchant to the retail dealer at a fixed list price, subject to the discount for the time being ruling in respect of the particular goods. This discount is often a very heavy one, and is also frequently made up of several discounts, each of which have been allowed from time to time as the market price has fallen. A bedstead for example may be listed at £10, but it may be subject to an allowance of 40 per cent. discount, and perhaps also to two further allowances of, say, 7½ per cent. and 2½ per cent. A purcaser from a retail dealer should therefore place little or no reliance in a manufacturer's price list as a criterion of a fair price for the goods. Such a list is often referred to by the dealer as evidence of his small profit on the transaction, or even of his selling below cost; without, however, knowing the discounts allowed, it is not only useless to an intending purchaser—it may even be a delusion and a snare. The word "discount" is also used in connection with the price of shares, the phrase that "such and such shares are at a discoumt" being frequently met with. In this connection the word means that the shares are below par, or their nominal value, and it is used in contradistinction to the word "premium"; thus a £100 bond, for which the market price is only £90, would be said to be at a discount of £10.

Discount, within the meaning of the definition with which this article is commenced, is usually known as *true discount* as distinguished from *interest*, with which, both in practice and in idea, it is very generally confused. To ascertain the *interest* on a loan of £100 at 5 per cent. at the end of the year is a very simple matter, and the true answer of £5 comes readily to the lips of any arithmetician. But the same answer is very frequently given, by those who should know better, to the question: What is the *discount* for the immediate payment of £100 due a year hence at 5 per cent.? Or, to put the question in another form: What is the *true discount* at 5 per cent. of a bill of exchange payable in twelve months' time? The answer is not £5; it is £4, 15s. 2¾d. In other words, the sum which is payable forthwith against a sum of £100 payable in twelve months' time, in order that the sum payable forthwith should at 5 per cent. interest be exactly the equivalent of the £100 at the end of the twelve months, is £95, 4s. 9¼d.

Bill-discounting.—It is with bills of exchange that the word discount is perhaps most familiarly associated. The operation of discounting bills is a most characteristic function of the modern banking system. Bills are the stock-in-trade of the banks, and they buy and sell them as readily as the ordinary trader does more material commodities. And buying and selling are really the appropriate words to use, for discounting a bill is not lending money to the holder thereof who offers it for discount; it is the purchase of

it out-and-out at a settled price, the purchaser being entitled to deal with it as he wishes—to rediscount it for example. When a bank has once discounted a bill for a customer, the full amount of the price paid for it is credited to him; there is never any thought of that customer or of any other party to the bill as a prospective debtor—bills of exchange are, in the ordinary course, honoured at maturity almost automatically. But before discounting a bill, the bank is careful to satisfy itself as to the credit and responsibility of the parties to it, and also that the bill is one created in the ordinary course of commercial dealing. This ordinary course of commercial dealing is frequently referred to as the natural stream of trade. Every commercial man has his own trade and a particular class of dealings and connections incidental to it; so long as his bill transactions come within those limits, they are in the natural stream of his trade, but when they transgress the limits they are outside the stream, and are at once objects of a banker's suspicion. A timber merchant, for example, sells his timber to builders and like tradesmen, and may usually take payment in bills. All bills within these transactions are accepted by a banker as normal, but when he with his local knowledge notices that one is accepted by, say a dentist, he is naturally suspicious and sees evidence of a dealing outside the stream. Bills of this latter class are accordingly avoided by the banks. It is the *bonâ fide* commercial bill that the banks deal in; they have no desire to acquire a stock of accommodation bills.

In discounting bills the banks generally charge the rate of discount for the time being ruling in the money market. The Bank Rate of the Bank of England is the rate at which that bank is for the time being prepared to discount bills. In view of the fact that the banks do not discount bills upon the principle of *true discount*, but charge the customer *interest* at the discount rate upon the total amount of the bill, it is obvious that the Bank Rate or the current rate of discount is really but another term for the current rate of interest. And the actual discount rate in the money market is determined mainly by the rate of interest payable for the time being by the banks for deposits, though this latter is mainly influenced by the prevailing Bank Rate. If the Bank Rate is at 3½ per cent., it is probable that the general rate of interest upon deposits will be about 2 per cent.; the banks are therefore prepared to discount bills at as high a price above 2 per cent. as competition in the money market will permit. The difference between the rate paid for deposits and the rate charged for discounting is supposed to represent the banks' profit. But as a matter of fact the profit is greater than this, for the simple reason that the banks, as we have already seen, pay interest on deposits and also charge interest, instead of true discount upon the whole amount of bills, when discounting them.

When a banker discounts a bill he writes down the full amount of the bill to the credit of the customer, and at the same time he debits him with the discount of it. We have observed (writes Mr. H. D. Macleod in his *Theory and Practice of Banking*) that this method of trading is more profitable than interest, and the profit increases the higher discount is. A very slight consideration will show this. Suppose a money-lender advances money at 50 per cent. interest. He would advance his customer £100, and at the end of the year receive his £100 back, together with the £50. His profits, therefore, would be 50 per cent. But suppose he *discounts* a bill for £100 at 50 per cent. He would only actually

advance £50, and at the end of the year he would receive £100, consequently he would make a profit of 100 per cent. If the lender lent the money at 100 per cent. *interest*, he would advance £100, and receive £200 at the end of the year. If he *discounted* a bill at 100 per cent., he would advance *nothing*, and receive £100 at the end of the year, or his profit would be *infinite!* Now, without encumbering ourselves with mathematical formulæ, we may give a table showing the difference in profit between *Interest* and *Discount*:—

Table showing the Profits per cent. and per annum at Interest and Discount.

Interest.	Discount.	Interest.	Discount.	Interest.	Discount.
1	1·010	4½	4·701	10	11·111
2	2·040	5	5·263	20	25·000
2½	2·564	6	6·382	30	42·857
3	3·092	7	7·526	40	66·666
3½	3·626	8	8·695	50	100·000
4	4·166	9	9·890	100	Infinite

A consideration of this table will show the enormous profits made by bankers when discount is high, and also show what discounting a bill at 50 and 60 per cent.—which we occasionally hear of in courts of law—means.

DISCOVERY has been defined as the right by which a party to some proceedings—actually commenced or contemplated—before a civil court is enabled, before the determination of any matter in question in those proceedings, to extort on oath from another party to those proceedings—(1) all his knowledge, remembrance, information and belief of facts concerning the matter so in question; (2) the production of all documents in his possession or power relating to such matter. From this it would appear that there may be two kinds of discovery; the first of knowledge of facts, the second of documents. And this distinction is borne out in practice by the division of discovery into two classes, namely: Interrogatories, or discovery by means of question and answer; and documentary, or discovery by means of the production and inspection of documents. It will be seen that the questions and answers the subject of interrogatories are not the same thing as questions and answers arising in the course of an oral examination of a witness in court during the progress of the trial. The advantages of discovery are available to litigants in both the High Court and the County Courts, as well as in the local courts of record.

If it were not for the adoption by the courts of the principle of discovery, a man with a full knowledge of facts which would show the truth and justice of the case, could, by concealing those facts within his own breast, and merely for want of disclosure or evidence, succeed in recovering a demand which he knows to be satisfied, or in resisting a demand which he knows to be just. Discovery enables the party in danger of being oppressed by such concealment to obtain from his adversary a disclosure of the facts within his knowledge or belief, and all material and relevant documents in his possession or power. However disagreeable it may be to make the disclosure, however fatal to the claim upon which he may have insisted, he is required and compelled, under the most solemn sanction of the law, to set

forth and disclose all he has, knows, or believes in relation to the matters in question.

Interrogatories.—In any action the plaintiff or defendant by leave of the court may deliver interrogatories in writing for the examination of the opposite parties; but interrogatories which do not relate to any matters in question in the action will be deemed irrelevant, notwithstanding that they might be admissible on the oral cross-examination of a witness. A company is equally bound with an individual to answer interrogatories. They must always be answered in an affidavit. A party may interrogate not only for the purpose of obtaining information as to material facts not within his knowledge, but also in order to obtain admissions from his adversary which will make it unnecessary for him to enter into evidence of the facts admitted. But unless strictly relevant to the question at issue in the action, any particular interrogatory will be rigorously excluded. The legitimate use, and the only legitimate use, of interrogatories is to obtain from an adversary admissions of fact which it is necessary for the party interrogating to prove in order to establish his case; and if the party interrogating goes further, and seeks by his interrogatories to get from the other party matters which it is not incumbent on him to prove, although such matters may indirectly assist his case, the interrogatories ought not to be allowed.

When a party applies for leave to interrogate, he must submit a copy of the proposed interrogatories to the court for its approval; then is the time for the adversary to object to them. Objections may be taken against any particular interrogatories, and are generally based on the ground that a proposed interrogatory is scandalous, immaterial, prolix, oppressive, or unnecessary. The terms applied to these objections are sufficiently explanatory for the general reader. There are, however, some other objections which call for special attention. It may be objected that an answer might incriminate the party interrogated, and this would be a sufficient objection to cause the court to refuse to order the answer. Or it may be objected, with equal force, that the subject-matter of the question is protected by legal privilege; but this objection is more general in case of discovery of documents. More generally important is the objection that the answer would disclose the evidence upon which the party interrogated depends for the support of his own case. But though he need not disclose his evidence, he is bound to disclose the nature of his case and the facts on which he relies.

Documents.—A party to an action may at any time, without filing any affidavit, apply to the court for an order directing any other party to the action to make discovery on oath of the documents which are or have been in his possession or power, relating to the matter in question in the action. The order may be directed generally, or limited to certain classes of documents, according to the discretion of the court. The party against whom the order is made is thereupon bound to make an affidavit setting out all such documents as he may have in his possession or power, and specifying which, if any, of the documents therein mentioned he objects to produce. The objections he may urge are much the same as those available with regard to interrogatories. That of legal privilege is a very usual one, and applies to private or confidential correspondence between a party to the

action and his predecessors in title on the one hand, and his or their solicitors on the other, written in contemplation or in the course of the action, or with reference to the subject-matter in dispute, or to questions connected with the matter in dispute in the action. The documents specified in this affidavit, and not privileged, may then be inspected by the adverse party and copies taken. A party is also entitled, without recourse to the court, to inspection before trial, and to copies of any documents referred to in the pleadings or affidavits of his adversary. Should the latter refuse to allow this inspection, he will be excluded from using the documents as evidence at the trial, unless he can satisfy the court that the documents relate only to his own title, he being the defendant, or that he had some other sufficient cause or excuse.

DISPATCH MONEY is an allowance made by the shipowner to the charterer in respect of any days which may be saved, in the loading or unloading of the cargo, out of the lay-days agreed upon in the charter-party. The amount of this allowance varies, and is fixed in the charter-party, according to the size of the vessel; it may take the form of so much per hour or day. *See* DEMURRAGE.

DISTILLER.—The conduct of the business of a distiller is mainly regulated by the Spirits Act of 1880. By this Act no person may, without being licensed to do so, or on any premises to which his licence does not extend—(*a*) Have or use a still for distilling, rectifying, or compounding spirits; or (*b*) brew or make wort or wash, or distil low wines, feints, or spirits; or (*c*) rectify or compound spirits. To contravene this prohibition is to incur, for each offence, a fine of £100; and all spirits and vessels, utensils, and materials for distilling will be forfeited. Any one who makes or keeps wash, prepared or fit for distillation, or low wines or feints, and has in his possession a still, is liable to the same penalties as is an illicit distiller. If a distiller in England keeps or uses a still of which the body, without the head, is of less capacity than 3000 gallons, he is not allowed to keep or use in his distillery at the same time more than two wash-stills and two low wine-stills: the penalty for non-compliance is a fine of £100, and a further fine of £100 for every time that any such still is used; and every such still will be forfeited. No one can have a licence to keep a still of less capacity than 400 gallons, unless he has in use a still of that capacity, or produces to the Commissioners of Inland Revenue a certificate, signed by three justices for the county or place, that he is a person of good character, and fit and proper to be licensed to keep the still, and that the premises in which he proposes to erect the still, and of which he is in actual possession, are of the yearly value of £10 at least. If the still is intended to be kept by persons in partnership, a certificate with regard to one of the partners will be sufficient. The Commissioners are not bound to grant the licence, notwithstanding the production of the justice's certificate; but in case of refusal they must state the grounds thereof in writing, signed by them, to the justices. The annual duty on a spirit distiller's licence depends, for any year, upon the number of gallons computed at proof of spirits distilled during the preceding year—not exceeding 50,000 gallons, £10; exceeding 50,000 gallons, for the first 50,000 gallons, £10; for every further 25,000 gallons or fraction of 25,000 gallons, £10.

Distiller's premises.—No person is entitled to a licence for, or to be permitted to make entry of, a distillery unless it is situate in or within a quarter of a mile of a market town. But a licence may be granted for premises outside this distance, on the terms of the distiller providing to the

satisfactoin of the Commissioners lodging for the officers to be placed in charge of the distillery. These lodgings must be conveniently situated, and must not form part of the distillery or of the distiller's dwelling-house, and the rent charged for them, unfurnished, must not exceed £15 a year. They must also be kept in repair by the distiller, and he is not allowed to interrupt or annoy any officer residing therein in his use or enjoyment thereof, otherwise his licence may be suspended or revoked. It is also provided that a distillery shall not be within a quarter of a mile of premises used for rectifying or compounding spirits, or of receiving or keeping spirits by a rectifier: the penalty for contravention is a fine of £500 for every week during which the premises are used as such. Nor may a distiller carry on upon his premises the business of a brewer of beer, or a maker of sweets, vinegar, cider, or perry, of a refiner of sugar, or of a dealer in or retailer of wine; nor may his business be carried on upon premises communicating otherwise than by an open public street or carriage-road with any premises used by a brewer of beer, or a maker of sweets, vinegar, cider, or perry, or a refiner of sugar, or a dealer in or retailer of spirits, or a dealer in or retailer of wine. A fine of £200 will be incurred by so carrying on business in face of the prohibition. The Commissioners may refuse to grant a licence for distilling spirits in any premises in which, from their situation with respect to premises used for rectifying or compounding spirits, or to a brewery or vinegar manufactory, they think it inexpedient to allow the distilling of spirits.

The spirit store and utensils.—Every distiller is bound to provide, to the satisfaction of the Commissioners, a spirit store, either within or without the premises upon which the spirits are distilled, and cause it to be properly secured. It must be kept locked by the officer in charge of the distillery at all times except when he is in attendance. Should the distiller fail to provide or secure a spirit store, his licence may be refused, suspended, or revoked. He is also required, under penalties, to observe the very detailed and voluminous rules as to vessels and utensils contained in the first schedule to the Act. The following are the penalties: (*a*) If there is found in a distillery any vessel in excess of the number permitted by the rules in the second part of the schedule, the vessel, with its contents, will be forfeited, and the distiller will incur a fine of £200; (*b*) for a contravention of the rules contained in the third part of the schedule, the fine is £200, and an additional fine of £20 for every day during which the contravention lasts; (*c*) for any contravention of the rules contained in the fourth, seventh, or eighth parts of the schedule, the fine is £200; (*d*) for contravention of the fifth, sixth, or tenth parts, the fine is £50; (*e*) every cask not marked as required by the rules contained in the ninth part of the schedule will, with its contents, be forfeited; (*f*) for any contravention of the rules contained in the eleventh part of the schedule, the wash, low wines, feints, or spirits in respect of which the rules are contravened will be forfeited, and the distiller incurs a fine of £200, or, at the election of the Commissioners, of twenty shillings for every gallon of the wash, low wines, feints, or spirits.

On giving two days' written previous notice to the proper officer, with particulars of the alteration, removal, or addition desired, the distiller may alter, remove, or add to any of his vessels, utensils, or pipes. By altering, removing, or adding to them without such a notice, he will incur a fine for

each offence of £200. Should a distiller make any attempt or use any device on his premises to prevent or hinder an officer from ascertaining the gravity, quantity, or strength of the wort, wash, low wines, feints, or spirits in any vessel, or whilst running, in order to deceive him in taking the dip or gauge of any vessel or utensil, the distiller will incur for each offence a fine of £200. And for each of the following offences he incurs a fine of £500, that is to say if he—(*a*) Places, affixes, or makes any cock, plug, pipe, or opening in, on, to, into, or from any vessel or utensil in contravention of the provisions of the Spirit Act; or (*b*) causes or procures any cover, fastening, cock, plug, pump, or pipe to be so made or used that any vessel or utensil may be employed, opened, removed, filled, or emptied in the absence of an officer, or as in any manner to avoid or defeat the security intended to be provided by the Act.

General provisions.—The Act then proceeds to provide in precise detail for the mode of carrying on of the distiller's business; and throughout it attaches very heavy fines for any contravention of the regulations therein laid down. The distiller is required to make various entries of his operation, the time and mode of the making of the entries being precisely prescribed. In the same way there are regulations as to the materials to be used in distillation, it being provided that the distiller is only to use wort made in his own distillery, and that the sugar shall be dealt with in a particular manner. Again, there are specified hours in which only it is lawful for brewing and distilling operations to be carried on, and certain notices which in the ordinary course of his business the distiller must give before each brewing. The mode generally of distilling is prescribed; also the minimum excess of wash or wort. The revenue officers are empowered to test the operations, and to take samples, and the distiller's stock can be kept only subject to certain regulations. Provision is also made for the charging, payment, and repayment of duty; and if the payment of any duties is in arrear, the collector may distrain therefor. There is also provision enabling the distiller to furnish a warehouse in which he may keep his spirits until their disposal without paying duty thereon.

DISTRESS.—There are a few instances in which the law allows a man to himself legally enforce his remedy for any wrong which he may have suffered at the hands of another. Generally speaking, no one is permitted to take the law into his own hands; if he has suffered a wrong, he can only enforce his remedy through the agency of a court of law. He cannot personally, on his own initiative, sell the goods of his debtor in order to obtain payment of the debt; the only course open to him is to obtain judgment for the amount in a court of law, and then, by process of execution, to sell the debtor's goods through the officers of the court, and in accordance with the court's rules. Of the instances in which resort to the aid of the courts is unnecessary, there are two of sufficient importance to be noticed: one is the case of a nuisance, which may be abated by the person injured; the other is that of rent in arrear, which may be distrained for by the landlord without recourse to the authority of any court—it is this latter instance which is the subject of this article. When a tenant is in arrear in the payment of his rent, the landlord may enter upon the premises the day after the rent is due, and seize and sell the tenant's goods in order to recover it; such an entry and seizure by a landlord is called a "levy," and the whole proceeding is

called a distress. But the landlord cannot distrain for more than six years' arrears, unless the tenant has within that time given a written acknowledgment of previous rent being due; nor, in respect of an agricultural holding, can he distrain for more than the arrears which have accrued during the one year immediately before the distress. A bankrupt's goods may be distrained upon either before or after the bankruptcy; but if after, only the six months' rent which accrued due before the adjudication can be recovered by this means—the balance must be proved for in the bankruptcy proceedings. There is another form of distress in cases where the cattle of another are trespassing upon and damaging a man's land; under these circumstances the cattle may be distrained for *damage-feasant*. There are special rules in regard to distress under certain statutes, *e.g.* the Agricultural Holdings Acts and the Small Holdings and Allotments Act. In this article, however, reference is made in general to what may be called the ordinary common-law distress for rent.

Who may distrain.—As a general principle it may be stated that any person may distrain for arrears of rent due from another if and when there subsists between them the relationship of landlord and tenant at the time of the distraint. By landlord is meant the person who not only is actually the legal owner of the premises or who has personally let them to the tenant, but one who has also such a property in the premises as to be entitled to possession thereof upon the determination of the tenancy. This latter essential characteristic of a landlord who is entitled to distrain is known as his reversion of interest in the premises. If between the time of the letting of the premises and of the default by the tenant in payment of the rent the landlord loses his reversion, he is unable to distrain. A landlord who is himself a tenant from year to year, and has under-let from year to year, would have a reversion sufficient to entitle him to distrain; but if he, being a lessee for a certain number of years, had assigned his term he would not. But even if there is no reversion in the person entitled to the rent, a right to distrain for it may be created by express agreement. A mortgagee who has given notice of the mortgage to the tenant in possession under a lease prior to the mortgage, is entitled to the rent in arrear at the time of the notice as well as to what accrues afterwards; and he may distrain for it after the notice. So he may distrain in the case of a tenancy made after the mortgage, where a new tenancy may be implied between the tenant and himself.

An authority given by the landlord to his tenant to pay the rent to a third party, whose receipt is to be a sufficient discharge, does not entitle the third party to distrain, not even if the third party receives the rent for his own benefit. A mortgagor who is in possession may distrain for rent due from his tenant, so long as his right to do so has not been interfered with by the mortgagee. One of several joint-tenants may sign a warrant of distress and appoint a bailiff to distrain for rent due to them all if the others do not forbid him; so also he may if, when applied to, they merely decline to move in the matter. It may be stated as a general rule that nothing short of actual payment or some equivalent in law, such as a valid agreement, will take away a landlord's right to distrain for rent in arrear. A landlord by accepting a security for its payment, such as a bill of exchange or taking interest on its amount, does not thereby extinguish his right, though it may be postponed until after the period during which the security subsists.

For what rent.—To give a landlord a right to distrain, there must be an actual tenancy at a specific rent. Where the owner of a factory containing several rooms lets standings therein for machinery, he himself supplying the power for working them but not actually letting a particular room, it was held that the weekly payments for the standing room could not be distrained for as rent. But there was held to be a sufficient tenancy to give rise to a right to distrain in a case where half a room in a factory, partitioned off and having a supply of steam power from the rest, was let at a fixed annual rent. If a tenant takes possession of premises for a certain term at a certain rent, but the agreement for the tenancy is conditional upon the landlord doing certain acts, the rent cannot be distrained for until those acts are performed. Rent payable in advance may be distrained for, as we have already seen, as soon as the day is past upon which it is payable; but if it is only payable in advance after previous notice by the landlord requiring such a payment, the right to distrain does not accrue unless notice has been given in accordance with the agreement. Rent of furnished lodgings may be distrained for.

What goods distrainable.—Subject to certain exceptions, all movable goods upon the tenant's premises at the time of the distress may be distrained upon. But *the exceptions* are so important as to merit very special attention.

Owners of goods having special privileges.—Under this head it will be convenient to notice the position with regard to a distress of tenants who may be ambassadors and registered companies. The goods and chattels of *ambassadors* or other public ministers of any foreign state, as well as the members of their staff, are absolutely privileged from distress; and this is so even where the ambassador or minister or his servant is a British subject. Consuls do not come within this privilege, nor do ambassadors who have not been received as such, nor do servants of an ambassador who do not live in their master's house and whose goods in their own are not necessary for their master's convenience. Where the tenant is a *company*, a distress may be levied as in the case of an ordinary tenant unless the company is in process of winding-up, when it can only be levied by leave of the court. If the distress is already levied, and the company then winds up, the court would not, as a general rule, restrain the landlord from proceeding with the distress and selling the goods seized. If the tenant of the premises has thereon the goods of a company against which the landlord has no claim for the rent, the landlord may seize those goods in a distress against his tenant, even though the company is being wound up. There are also privileges with regard to distress which are possessed by agisters [*see* AGISTMENT] and by LODGERS (*q.v.*). And not only are there now the exceptions in favour of the goods of lodgers, but there are also exceptions generally in favour of under-tenants and of persons who have no interest in the tenancy of the premises. These exceptions, together with further provisions in favour of lodgers, have been introduced by the Law of Distress Amendment Act, 1908, and are the subject of an article (which should be read with this) in the Appendix under the title DISTRESS.

Goods privileged from distress.—There are two classes of property privileged from distress; of these one comprises goods absolutely privileged, the other goods conditionally privileged. Goods *absolutely privileged* may in their turn be divided into classes—one in which the privilege has arisen at common law, the other in which it has been conferred by statute. By the

common law the following eight kinds of property are absolutely privileged from distress: (1) Things affixed to the freehold; (2) goods delivered to a tenant in the way of his trade; (3) goods of a perishable nature; (4) goods in actual use at the time of the distress; (5) animals in a state of nature; (6) goods in the custody of the law; (7) money; (8) straying cattle. By statute the following six kinds of property have a similarly absolute privilege: (9) Wearing apparel, bedding, and tools to the value of £5; (10) agricultural machinery and live stock; (11) meters, fittings and machinery connected with gas, water and electric lighting, and also with hydraulic power by private acts; (12) looms and apparatus of textile manufactures; (13) railway rolling-stock; and (14) crops and farming stock. The following are some examples of property so absolutely privileged: (1) When goods and chattels are so built into or affixed to the premises or the freehold as to form a part thereof; or so that their removal cannot be effected without damage to the premises; or so that they cannot be restored in the same condition as when seized, they are called *fixtures* as a general name. An outbuilding such as a greenhouse actually built on and into the ground would thus be exempt from a distress; so would machinery which is attached to the freehold, unless the damage caused by its removal would be so slight as to be practically none at all; fixed chimneypieces are always considered to be privileged; so are trees and shrubs growing in a nurseryman's garden. But in connection with the last exemption it should be noted that by statute all sorts of corn and grass, hops, roots, fruits, pulse, or other product whatsoever growing upon the land demised may be taken by a distress.

Property contained in exemption (2) has always been unquestionably exempt from distress, difficulty arising only in ascertaining whether any particular goods are so circumstanced as to be entitled to the privilege. In considering a case of this nature the old definition of this class of exemption should be borne in mind: "*Things delivered to a person exercising a public trade, to be carried, wrought, worked up, or managed in the way of his trade or employment.*" The privilege is of great importance to the owners of such goods, as it exempts them from seizure in consequence of the default of parties on whose premises they may be deposited. On the other hand the privilege is no hardship to the landlord, for it is generally applicable only to goods which no man could possibly suppose to be the property of the tenant. Machinery which is entrusted to an individual, together with materials to be worked up, would not be within the privilege, which is strictly confined to the materials supplied. No cases go beyond these: that material to be worked up is privileged; that a conveyance by which it is carried to and from the place of manufacture is privileged; that it is privileged in the hands of a carrier while he is carrying it, in the hands of a factor to whom it is consigned, and in the hands and warehouse of a wharfinger or warehouseman where it is lodged and deposited by the factor. Some special examples of circumstances under which the privilege arises are as follows: cloth deposited with a tailor to make a garment; a horse standing in a farrier's shop to be shod; goods lying upon any part of the premises occupied by an auctioneer for the purpose of being sold by him; and goods entrusted to a warehouseman, commission agent, pawnbroker, agent, or factor. If goods are entrusted to a general agent who, not really carrying on a "public trade," acts in respect of them only as the special agent and

representative of the owner, they are not privileged. This was the case where an agent, under an agreement with a firm of carpet manufacturers, took some premises and put his principals' name outside as well as his own, and was entitled to carry on other agency business, though he was in fact agent for only one other firm.

As to exemptions (3), (4), and (5), it will be sufficient to say that the test of *perishable goods* is whether they can be returned to the tenant in the same condition as when seized—fish would be perishable, but wine bottled or in the wood would not be. Goods *in actual use* would include a sewing-machine being actually used, clothing being worn, or a horse being ridden. *Goods in the custody of the law* refer chiefly to goods taken in execution of a judgment by the sheriff or other officer of a court, though in this case the sheriff may, under a statutory authority, remove the goods and sell them upon previous payment to the landlord of a year's rent, if there is so much due. But if the premises are let at a weekly rent, the landlord has no claim upon any goods taken in execution for more than four weeks' arrears of rent; and if the letting is for any other term less than a year, he has no claim thereon for more than the arrears of rent accruing during four such terms or times of payment. Loose **money** is the subject of the 7th exemption, but if the money is enclosed in a sealed bag it is not privileged. Exemption (8) not calling for comment, notice will now be taken of the privileges created by statute, commencing with (9).

Wearing apparel, bedding, and tools.—The wearing apparel and bedding of the tenant or his family, and the tools and implements of his trade to the value of £5, are absolutely privileged from distress, unless he is holding over possession of the premises after the term of his tenancy has expired, and the distress is levied within seven days after demand of possession has been made by the landlord. (10). By the provisions of the Agricultural Holdings Act, 1883, *agricultural or other machinery* which is the *bonâ fide* property of a person other than the tenant of an agricultural holding, and is on the premises of the tenant under a *bonâ fide* agreement with him for the hire or use thereof in the conduct of his business, *and live stock* of all kinds which is the *bonâ fide* property of a person other than the tenant, and is on the premises of the tenant solely for breeding purposes, may not be distrained upon by the landlord for rent in arrear. Exemption (11) refers to meters, fittings, works, apparatus, accumulators, pipes and electric lines, and other similar articles which are supplied by gas, water, electric and like undertakings, for the use and convenience of consumers. The privilege would extend to stoves let upon hire by a gas company to a tenant. (12) and (13) are exemptions of a similar character. Machines, looms, materials, tools and other apparatus used in woollen, cotton, silk, and like *textile manufactures*, are privileged from distress whether they are let on hire to the tenant or not, so long as they are not in fact his property or the property of any other person who is liable for payment of the rent. So is *railway rolling stock*, if the name of its actual owner is sufficiently indicated upon it by a distinguishing mark; but if it is partly the tenant's property the landlord may distrain upon it to that extent. To come within the privilege, the premises of the tenant must be business premises connected by a siding to a railway. Exemption (14) is a difficult one even for lawyers to clearly understand. It should be sufficient to here state that, under certain conditions, a landlord cannot distrain upon

corn, hay, straw, turnips, or other produce which may have been severed from the soil and sold by a sheriff, nor on any cattle or beasts connected therewith.

Goods conditionally privileged.—To property having only a qualified exemption from distress, reference has already been incidentally made to two classes, viz. live stock which has been agisted, and crops and farm produce. *Beasts of the plough and sheep*, but not heifers, young steers, and unbroken horses, are not liable to distraint unless and until no other sufficient goods and chattels can be found for the distress. Of more general interest is the privilege in favour of *tools and implements of trade.* These have already been seen to be absolutely privileged when in actual use, and also up to the value of £5. When the facts of the particular case exclude this absolute privilege, tools and implements of trade are only privileged where there is other sufficient distress on the premises. The privilege in such a case therefore amounts to this: that the landlord must look to the other goods on the premises before he can touch the tools.

Goods privileged under the Law of Distress Amendment Act, 1908, are dealt with in the article DISTRESS (*q.v.*) in the Appendix. Such would be goods of *lodgers, under-tenants, and others with no interest in the tenancy.*

Where a distress may be made.—When a person intends to levy a distress he should do so upon the premises in respect of which the rent is payable. It is only the goods there found which are liable to the distress. If, however, after the rent has become due the tenant fraudulently or clandestinely removes any of his goods from the premises with a view to cheating his landlord, the latter may follow and distrain them wherever he finds them within a period of thirty days after, unless they have been *bonâ fide* sold for a valuable consideration to a person without knowledge of the fraud. All persons privy to, or assisting in, a fraudulent removal or concealment of the tenant's goods are liable to forfeit double the value to the landlord. This forfeiture may be recovered by the landlord in an action of debt; but if the value of the goods removed is less than £50, then the double value may be recovered before the magistrates. In the latter case the magistrates have power to commit an offender to prison for six months if the money is not paid and no sufficient distress can be found. The landlord may also distrain the beasts of his tenant which he sees being driven off the premises in anticipation of a distress, or which happen to be feeding at the time upon any waste or common appendant to the tenant's premises.

With regard to the above provisions as to fraudulent and clandestine removal of goods, there are two points which should be noticed. The first is that it is only unlawful to remove the goods after the morning of the day upon which the rent has become due in respect of which they are liable to a distress. From this it results that a tenant may safely remove his goods so long as he does so before the day upon which the rent becomes due, and which he does not expect to be able to pay. The second point is that it is the tenant's goods which must not be removed. It accordingly follows that there is nothing to prevent any other person removing his own goods from the tenant's premises in view of and to avoid an anticipated distress. A hire-furnisher or a lodger is an instance of such another person, and when removing the goods it is immaterial whether they are taken away before or after the time at which the rent is due. Moreover, the tenant's own goods may be lawfully removed with his consent by one of his creditors in satisfaction of

a *bonâ fide* debt. If they are to be removed by a third party after the rent is due, care should be taken that the removal is effected between sunset and sunrise, as during that period of time a landlord has not in any case a power to levy his distress. When goods have been fraudulently or clandestinely removed and placed in a locked or secured place, the landlord or his agent may within the thirty days, during the daytime and with the aid of a constable, break the place open, and there and then distrain upon the goods; but if the place is a dwelling-house, this can only be done after he has made an oath before a magistrate showing reasonable ground for suspicion that the goods are therein. In London, vehicles removing goods between eight o'clock in the evening and six o'clock in the morning may be detained by a constable if he has good reason for believing that the goods are being removed by the tenant with a view to avoid distress.

Manner of levying a distress.—A distress may be levied by the landlord in person, or by an agent duly authorised to make the levy on his behalf. If the distress is to be levied by an agent, the only person who may lawfully act in that capacity is *a certificated bailiff*, as to whom reference should be made to the heading BAILIFF. The authority to the bailiff is generally in writing, an appropriate form of which is appended to this article. This document, usually called a *distress warrant*, does not require a stamp, and operates between the landlord and the bailiff as a warranty to the latter that the landlord has a right to distrain, and as a promise to indemnify the bailiff against any damages he may sustain through the tenant or any other person disputing that right. It is important from the point of view of the bailiff that the distress warrant should contain a specific indemnity that goes further than the foregoing, for the law does not stretch very far in the way of inferring one in favour of the bailiff. It certainly will not require the landlord to indemnify the bailiff against any wrongful acts of the latter's agents or servants done in the course of the distress, unless such an indemnity is clearly contained in the warrant. But if the landlord should suffer expense through the improper acts of the bailiff, such as levying an excessive distress without authority, he is entitled to recover it from the bailiff.

The levy must be made during the daytime, that is, between sunrise and sunset, and by an entry upon the premises in any of the usual ways by which an entrance may be effected. The outer door is the proper means; but this must not be broken open, though it may be opened by turning a key already in the lock or by drawing a bolt. Once lawfully inside, the distrainer may break open any inner doors, and if forcibly ejected, he may break open the outer door in order to regain possession. Besides the outer door, any means of entry like an open window or climbing over an adjoining wall may be resorted to. By the provisions of an ancient statute, it is unlawful to levy a distress upon goods in the highway or a street. After entry, the bailiff must demand payment of the rent, and if this is tendered to him at once, he is bound to take it in full discharge of the distress, and cannot claim any costs and expenses. But if the rent is not forthwith paid to him upon demand, his duty is to effect a seizure of the goods distrained upon, and to make an inventory thereof. A copy of this inventory, together with a notice of the distress specifying the cause of it, is then required to be served by the bailiff upon the tenant personally, or left at the principal house or other most notorious place charged with the rent distrained for. An omission to serve this inventory

and notice will invalidate the seizure, and any consequent sale of the goods will be wrongful.

A distress being in the nature of a *pledge* taken by the landlord from the tenant as a security for payment of the rent in arrear, the landlord when he has seized the goods is bound to keep them safely for the tenant until such time as they are redeemed by the payment of the rent, or until the time at which the law allows them to be sold. This is the reason that perishable goods are privileged from distress, and that the landlord has no right to use any property taken in distress unless their use is necessary for their preservation. He may accordingly milk cows; indeed he is under an obligation to do so. Nor may he seize goods to an excessive extent; his seizure must be proportionate to the amount claimed and the costs. The old method was to take the goods away and impound them in a place of security until sale or redemption by the tenant, and this method is available to-day if in any particular case it should be thought expedient to adopt it. But in distresses as they are now carried out it is unusual to remove the goods from the tenant's premises, for the landlord has a statutory power to take such part of those premises, or even the whole, as may be necessary for securing the goods, and to there place a man in possession of them. As a rule the tenant prefers that they should be so left on his premises, and so be available for his own use as before. The landlord may, if he likes, lock all the goods in one or more rooms, and he is under no obligation to leave them distributed over the premises, as he may have found them, and to leave a man in possession.

Replevy.—The tenant has a right to replevy, or redeem, the goods at any time within five days after their seizure upon payment of the rent distrained for and the costs and expenses of the distress. These costs are set out in the article on BAILIFFS. Five days mean five days calculated without including the day of seizure, but inclusive of the last day. But it often happens that a tenant desires an extension of this time in order to obtain the money to pay out the distress. On the other hand, he may prefer that the goods were sold without waiting the requisite time. Either of such cases is met by the provisions of an Act of William and Mary and a subsequent statute, to the effect that the five days for replevying "shall be extended to a period of not more than fifteen days," if the tenant or the owner of the goods distrained upon make a request in writing to that effect to the landlord or other person levying the distress, and *also give security* for any additional cost that may be occasioned by the extension of time. And at the written request of the tenant or owner the landlord may sell the goods distrained upon, or part of them, at any time before the expiration of the delay imposed by the law or notice of the tenant. After the expiration of the five days or of the extended time, if any, the landlord has no option except to remove the goods from the tenant's premises, unless he has the tenant's written consent thereto.

In the strictly technical sense, a replevin is a redelivery to the owner of goods which have been wrongfully distrained or taken from him upon surety that he will pursue an action against the person who has distrained. The tenant would take these proceedings when the landlord has persisted in the distress notwithstanding that the tenant has tendered the rent; or there is no rent actually in arrear; or the landlord's title to distrain is barred by the Statute of Limitations; or the landlord's title expired before the rent became due; or the tenant has in fact paid the rent to the landlord or to his

mortgagee. There are other circumstances, in which the proper course would be for a tenant to thus replevy. To replevy, the tenant or other owner and claimant to the goods must (unless proceeding under the Act of 1898, as explained in the article on DISTRESS in the Appendix) take proceedings in the county court, and they may be commenced at any time after the distress has been levied until just before the goods are to be removed for sale. But the sooner replevy proceedings are taken the better. The proceedings commence with a notice of his intention to replevy being given by the claimant to the registrar of the local county court, whereupon the registrar will require him to give security either by deposit of money or by a bond with sureties. The amount of the security required is in the discretion of the registrar, but as a general rule it will be for so much as that official may deem sufficient to cover the alleged rent or damage in respect of which the distress has been made. As soon as the security has been completed the registrar issues a warrant to the high bailiff of the county court directing him to replevy and deliver the goods to the tenant or other claimant as the case may be; thereupon the goods are accordingly given up. After this the claimant proceeds with the action of replevin in the usual way, the landlord being the defendant to it, and the question to be decided being in effect whether the goods were rightfully distrained and the landlord entitled to their proceeds.

Sale.—The landlord having held the goods for the prescribed time is thereupon entitled to remove and sell them, and in order to effect their sale he is entitled to a reasonable delay. We have seen, however, that he cannot keep them after that time on the tenant's premises unless he does so by consent. But the landlord is not bound to remove them for the purpose of the sale if he can otherwise effect the sale within the provisions of the law. In practice, however, it is usual for them to be removed to an auction-room; and this being done generally at the request and for the benefit of the tenant, the removal and its risks and expenses are borne by the tenant. Though sale by auction is not obligatory upon the landlord, he is yet bound to sell the goods at the best price; should he fail in this respect and sell unreasonably the tenant may claim damages. Having once properly selected the goods when distraining, the landlord when selling is not bound to postpone the sale of the conditionally privileged goods to those that are not privileged. He must, however, preserve the goods until the sale in a reasonably proper condition, so that their value may not be depreciated and the best price can be obtained. After the sale the overplus, subject to deduction for the expenses, is paid back to the tenant, and any goods not sold or required to be sold are returned to the tenant's premises. The landlord need have no regard to claims by third parties to those goods; it is sufficient if he returns them to those premises. The expenses of the distress are calculated upon the scale set out in the article on the BAILIFF. With regard to the appraisement, this need only be touched upon in order to say that it is a procedure rarely adopted at the present day, and if demanded by the tenant will only needlessly increase the expenses. *See* LANDLORD AND TENANT; and for the Scots law hereon, HYPOTHEC. *See also* APPENDIX.

1. *Warrant to Distrain for Rent.*

To Mr. A. B. of , Certificated Bailiff.

I hereby authorise and direct you to distrain the goods and chattels [*and* growing crops] in and upon the dwelling-house [*and* farm and lands *if so*] and

premises situate and being [*here state full and precise address of the premises*] in the parish of , in the city [*or* county] of , and now in the occupation of E. F., for £ , being year's [quarter's *or* half-year's, *as the case may be*] rent due to me in respect thereof on the day of last and now in arrear, and to proceed thereon for the recovery of the said rent as the law directs. But you are hereby expressly prohibited from taking any property in the distress not legally liable thereto.

Dated this day of 19 .

Yours, &c.,

C. D.

2. *Inventory of Goods Distrained.*

An inventory of the goods and chattels distrained by me [*or* A. B. as bailiff to Mr. C. D.] this day of 19 in the dwelling-house [farm and lands] and premises of E. F. situate in [*here describe the premises as in form No.* 1] [by the authority and on behalf of the said C. D.] for £ , being year's [quarter's *or* half-year's] rent due to me [*or* to the said C. D.] at last, and now in arrear and unpaid.

IN THE DWELLING-HOUSE.

[*Here set out the rooms throughout the house, with their contents.*]

IN THE APPURTENANCES.

[*Here set out the different outbuildings, with their contents, and finish with the following notice*:—]

Where Distress is of Furniture or other Chattels.

To Mr. E. F., and to all whom it concerns.

Notice is hereby given that I have [*or* have as the bailiff of your landlord, Mr. C. D.] this day distrained upon the above-mentioned premises the goods and chattels mentioned in the above inventory for £ , being years [quarter's *or* half-year's] rent due to me [*or* to the said C. D.] at last in respect of the said premises; and unless you pay the said rent with the costs of this distress within five days from the service hereof the said goods and chattels will be appraised and sold according to the law [*the place where the goods have been impounded should be stated in this notice, in case they have been removed from the premises*].

Dated the day of 19 .

C. D. [*or* A. B.]

4. *Where Distress is for Growing Crops.*

To E. F., and to all whom it concerns.

Notice is hereby given that I [*or* that I as bailiff to Mr. C. D., your landlord] have distrained this day on the above-mentioned land and premises the several growing crops mentioned in the inventory for £ , being years [quarter's *or* half-year's] rent due to me [*or* to the said C. D.] at last in respect of the said lands and premises; and unless you pay the said rent and also the charges of this distress I shall [*or* the said C. D. will, *if this is signed by the*

bailiff] proceed to cut, gather, make, cure, carry, and lay up the said crops when ripe in the barn or other proper place on the said lands and premises, and in convenient time sell and dispose of the same in and towards satisfaction of the said rent, and of the said charges and of the costs of appraisement and sale, according to the law.

Dated this day of 19

C. D. [*or* A. B.]

5. Tenant's consent to Landlord continuing in possession.

To C. D.

I hereby request you to keep possession of the goods and chattels which you have this day [*or according to the date*] distrained for rent due from me to you in the place where they are now lying at [*here describe the place and premises*] for the space of days from the date hereof, on your undertaking to delay the sale of the said goods and chattels for that time for my accommodation and in order to enable me to discharge the said rent, and I will pay the man for keeping the said possession and all other the extra expenses caused by the continued possession.

Dated this day of 19 .

E. F.

6. Request to postpone Sale.

To C. D.

I hereby request that you will not sell the goods and chattels distrained by you at [*here describe the premises*] until the expiration of fifteen days from the date of the levying of the distress. And I propose as security for any additional costs occasioned by this extension of time the following persons as sureties, viz. [*here set out the full names and addresses of the proposed sureties, together with their occupations*].

Dated this day of 19 .

E. F.

[*or other the owner of the goods distrained upon*].

DISTRIBUTION OF INSURANCE SURPLUS.—THE BONUS.—To a life insurance office, to its agents, and to those of the public who are interested in its operations, there are only one or two other subjects connected with the theory and practice of life insurance which have so much practical interest and importance as the one the subject of this article. To the public this subject would perhaps have appeared more naturally under the title of "participation in profits," but, strictly speaking, it is a surplus fund, not a profit, which is distributed by an insurance office, and in which certain of its policy-holders share. In general, however, under the term "participation in profits," the insurance office offers certain inducements to the public to become holders of its policies, its agents enforce and illustrate the offer with much show of critical comparison with the like offers of competing offices, and the insuring public read the offer and listen to the agent, and may subsequently receive something in the shape of a participation in "profit," or, in other words, a "bonus." But as a rule all these parties, except the office itself, know little of the technique of the subject under discussion. The outline here presented may perhaps be of some value to both agent and assured.

An ideal life insurance office should not make a profit at all; indeed the attempt of most offices is to so arrange their operations as to eliminate the

possibility of profit except so far as it is found necessary to create one for the profit-sharing policy-holders. This applies in particular to the offices conducted on the mutual principle, but beyond a certain small profit it now applies to proprietary offices as well. In theory the premiums are so calculated upon the basis of mortality tables, and of the possible interest to be yielded by investments, that if a society could conduct its business without expense the premiums it receives would be sufficient to discharge the claims to which from time to time it must become liable as the policy-holders die As soon as it stopped accepting new business, its income and funds would gradually diminish, until after the death of all the policy-holders except one it would have in hand just sufficient at the time of that survivor's death to meet his legal representative's claim. It would die a natural death, solvent to the last, but nothing more. From the foregoing it is obvious that where the question of expenses enters into the problem of life insurance there at once the ideal is unattainable. Something must be added to the premiums to provide for the necessary expenses of acquiring and conducting business. And since even mortality tables and estimated yield of investment are mere approximations, some provision must be made in case of their deviation from the expected course in an adverse and a wrong direction. To provide for these contingencies the ideal premium will be useless; it is necessary to add something to it. In other words, the *net premium* will be "loaded," and then be called a *gross premium.*

The "loading" may be said to chiefly provide for (*a*) the expenses of the business, commissions, losses on surrenders, and lapses; (*b*) the possible shorter general duration of life among the policy-holders than was anticipated on the bases of the mortality tables; and (*c*) a possible diminution in the rate of interest obtainable on investment of funds, as also any loss which may arise upon realisation or failure of investments. But to make the load really effective, it must be sufficient to provide for these expenses and losses to a larger extent than they are likely to occur in the ordinary course of events. This fact, together with the fact that instead of losses in respect of the duration of life and of investment there may be a fluctuation therein distinctly favourable to the society, makes it possible for a very considerable surplus to accrue. This is the surplus which is available for distribution amongst such of the policy-holders as are entitled to share therein, and which then becomes their bonus.

All life insurance offices are most anxious to increase their business, and in view of the keen competition subsisting between them, each tries to offer some special advantage to its assured. And the most popular inducement is that of a bonus. This is something tangible and apparently valuable, and consequently the public are inclined to favour the office which offers the highest. But the assured have to pay for it; and it may be taken as a general rule that no greater bonus is given than the payment is worth. In order to make a surplus more certain, and in order to make it large and attractive, the life insurance offices *further* load the premium for the purpose of its more certain creation, and limit its distribution amongst those of the assured who pay the further loaded premium. There are accordingly two classes of policy-holders—those who, paying the ordinary gross premium, are entitled to only the specific sum assured, and who may be said to never

receive the full value of their payments, and those who, paying the gross premium increased by the addition of the further loading, are entitled to a share in the surplus in addition to the sum assured. This surplus is usually ascertained and distributed at certain fixed intervals—usually every five or seven years. The quinquennial or five-yearly distribution is now more general than the septennial or seven-yearly. It may be said that from the point of view of the advantage of the assured the shorter interval between the distributions is more preferable than the longer. An annual division would be even better; but in view of the recent introduction of interim bonuses, the question of the length of the interval or valuation period is not now so important.

At the end of every interval, each life office, whilst investigating its solvency, must make an estimate of its surplus available for distribution as a bonus; in effect it must take stock. It is not unusual, however, for some offices to estimate their surplus yearly, even though the bonus is declared at longer intervals, for by so doing the progress of the surplus may be traced every year and its ultimate amount anticipated with a considerable amount of accuracy. The processes by which the estimate may be arrived at vary in their details in different offices. But whatever the process may be, the principle of the procedure is the same. First must be ascertained the present value of all the net sums ultimately payable under all the policies for the time being in force; and for the purpose of this calculation regard would be had to only the net sum payable on a profit-bearing policy. The next thing is to find the present value of the future premiums payable in respect of these policies. The latter present value is deducted from the former, and the amount of the difference, after making a further deduction in respect of future expenses, is kept in hand and invested, and serves as a *reserve* fund for payment of the policies as they may fall due. Now it is obvious that if the assets of the office were exactly equal to the amount required to be kept in hand as a reserve, the office would be solvent—no better, no worse than that. But in view of the probable fact that the office has been working upon safe and profitable lines—its investments returning good interest, and its premiums being well loaded, the assets are most likely to exceed in amount the sum required to be set aside as a reserve fund. It is this excess, the difference between the assets, or the invested funds of the office, and the reserve, or the net liability of the office, that constitutes the surplus—the amount to be distributed amongst the profit-sharing policy-holders. Of course, if the office is a proprietary one, the shareholders have naturally a prior interest in the surplus; but it not being usual to pay a higher dividend on the capital than 10 per cent.—very rarely so high as 20 per cent.—the surplus may be after all a valuable addition to the receipts of the profit-sharing assured.

It may be of interest to note the sources from which one of the wealthiest and best managed offices derives its profits. Out of a total sum of £243,130 available for distribution at the end of a recent quinquennial interval, it had derived £79,144 from interest on investments earned beyond anticipation, £63,587 from the loading of the premiums for expenses, £48,620 from an advantageous mortality experience, and the balance of £50,000 from sundry sources of profit, mainly including other remunerative investments.

This clearly shows the dependence of the surplus upon the three factors alluded to at the beginning—the provision for expenses, the mortality experience, and the fluctuation of interest.

The office having thus ascertained its surplus, the next proceeding is its distribution. Though the principles which should govern the distribution are readily accepted, and even attempted to be put into practice, by all offices equally, it is yet a matter for remark that there exists an extraordinary absence of uniformity of practice in this matter. There may be said to be two principles which form the basis of a perfect distribution. First, that it should be equitable, in the sense that those of the assured whose premiums have been loaded for its creation should receive it fairly amongst them in proportion to the loading each has borne. Secondly, it should be simple, so that those who pay for and receive it should be able to easily and clearly understand its operation. Yet on the basis of an investigation conducted some ten years ago, it appears that among seventy-six British life offices there were then in operation over twenty different systems of distribution of surplus. These figures would not be precisely correct for to-day, but there still remains a sufficient divergence of practice to make them fairly indicative of what does now really exist. Amongst the possible methods of distribution may be mentioned: a division in proportion to either the premiums or the loading paid during the valuation period; a reduction, by way of percentage, of the premiums after a fixed period; a division in proportion to the difference between the accumulated premiums upon an insurance commencing at the date of the last previous valuation at the then age of the assured, and the reserve for such an assurance at the time of division; a division only among those policies, the premiums on which, accumulated at compound interest, amount to the sum assured; a bonus in proportion to the number of premiums paid since the commencement of the policy; a division in proportion to the premiums paid in the valuation period, previous bonuses being treated as new assurances; and in addition to some ordinary method, a particular deferred bonus scheme.

But most of the above are giving place to more modern and scientific systems. Thus a number of offices distribute their surplus by a division partly in proportion to the premiums and loading paid during the valuation period, and partly according to the excess in the rate of interest realised over that anticipated and provided for at the previous valuation. Still a larger number of offices give a compound bonus or a uniform percentage upon previous bonus additions as well as upon the sum assured. But the most popular and increasingly general system is probably that which gives a uniform bonus or an equal percentage per annum for each premium paid during the valuation period. The first of the last three systems is known as **the contribution method**, and was first applied to the distribution of surplus by a life office of the United States, in which country it continues to retain its popularity. As modified by an eminent actuary, it has still a considerable support in this country, but generally speaking it may be said to lay the burden of any adverse fluctuation in the surplus upon the shoulders of the younger policy-holders; this may be just, but it is not conducive to an increase of new business. It has also been objected to this method that it is somewhat troublesome and laborious to apply, and it is difficult to explain

to the general public, who can generally much more readily appreciate the supposed equity of a bonus which bears some percentage relation either to the amount assured or to the premiums paid.

The uniform reversionary bonus method is the name applied to the last two of the before-mentioned three systems of distribution, each of these two being in principle a modification of the uniform reversionary bonus method. It is the method now chiefly in use and most generally approved by insurance experts in this country. It is extremely simple in its operation; the assured are as nearly as possible guaranteed a share of the surplus in proportion to their contributions thereto, and the longer a policy exists the larger is the cash bonus from time to time. In the case of endowment policies, especially those of short duration, this method is very beneficial to the assured. A well-known actuary, Mr. H. W. Andras, F.I.A., has thus described this method: "The reversionary bonus allotted is calculated as a percentage per annum on the sum assured only, or on the sum assured and existing bonus additions for the number of years' premiums due and paid during the valuation period. The bonus allotted at the first distribution after the policy is effected in respect of the period between the date of commencement of the assurance and the first distribution, in some offices vests at once, no matter how short a time the policy may have been in force, but as a rule there is a period from the date of assurance which must elapse before any allotted bonus vests, a reserve being made at the valuation for the deferred bonuses allotted to policies which have not yet qualified to participate."

When dealing with a *reversionary* bonus, it should be remembered that this is payable only upon the death of the assured, or in the case of an endowment insurance at the expiration of the specified duration of the policy, or upon the assured's death if that should first happen. A *cash* bonus, on the contrary, is payable at the time of its declaration. The result of this is that the present amount of the reversionary bonus is much less than the amount of cash which in the ordinary course of events will be ultimately paid in respect of it when the policy becomes a claim. A young man of twenty-five who becomes entitled to a cash bonus of £10 would receive that amount, and there would then be an end of that matter; but if he had become entitled to a reversionary bonus of the same amount, this would probably attain to the sum of about £30 upon his death. A bonus may also take the form of a *permanent reduction* of the premium, or it may be distributed as a *temporary reduction*, *i.e.* the premiums are reduced by a specified amount for a certain number of years. But whatever form the bonus may take, its actual value at the time of its declaration may always be easily calculated. The value of the cash bonus is of course expressed in itself; that of a reversionary bonus may be calculated as an ordinary reversion upon a life or after a certain period of time, and that of a permanent or temporary reduction as a life annuity, or an annuity certain, of the amount of the reduction.

When the value is ascertained, the inquirer may discover how far an investment in a profit-bearing policy in a particular company will be a profitable one. Thus suppose a policy for £100, with profits, may be effected at the age of thirty-seven at a premium of £3, while a policy for £100, without profits, may be effected at the same age at a premium of £2, 10s. At the end

of five years this addition to the premium will have amounted to £2, 10s., and consequently the bonus at the expiration of that period must exceed £2, 10s. and compound interest at 4 per cent. in order to make the with-profit policy more profitable than the non-profit. Indeed, the bonus should appreciably exceed this amount in order to compensate for the possibility of death during the valuation period, in which event the bonus would be lost. Such a calculation as this should fairly determine the possibilities of any life insurance office from the point of view of profit for the assured. But regard must of course be had to any other facts particularly connected with that office's principles and method of distribution of its surplus. *See* PREMIUM; LIFE INSURANCE; MORTALITY TABLES.

DISTRICT REGISTRY.—For the convenience of suitors living or carrying on business in the provinces, there are established in most of the principal towns in England what may be called branch offices of the High Court of Justice. These offices are known as District Registries, are available for the district to which they belong, and are under the control of officials known as District Registrars. These District Registrars have a jurisdiction concurrent with that of a Master of the Supreme Court, except that the registrars have also an exclusive jurisdiction in certain cases. A suitor in the High Court is entitled to issue a writ in a district registry, and the proceedings will there be continued until trial at the local assizes, unless the defendant, not being a resident or carrying on business in the district, appears in London, or exercises certain rights of transfer he possesses.

An action proceeding in a district registry may be transferred to London by the defendant otherwise than by entering the appearance in London, in the cases, and within the times following, as a matter of right: (1) Where the writ is specially indorsed, and the plaintiff does not within four days after the appearance of the defendant give notice of an application for judgment in default of defence under Order XIV., then the defendant may remove the action as of right at any time after the expiration of the four days, and before delivering a defence and before the expiration of the time for doing so; (2) where the writ is specially indorsed and the plaintiff has made the application for judgment and the defendant has obtained leave to defend, then the defendant may remove the action as of right at any time after the order giving him leave to defend, and before delivering a defence and before the expiration of the time for doing so; (3) where the writ is not specially indorsed any defendant may remove the action as of right at any time after appearance, and before delivering a defence and before the expiration of the time for doing so; (4) in an Admiralty action *in rem*, any person who may have duly intervened and appeared may remove an action from a district registry as of right. In any other than these four cases an action will only be removed to London if the court, judge, or registrar is satisfied that there is sufficient reason for doing so. And so an action proceeding in London may be removed to a district registry if there is also a sufficient reason for doing so. *See* ACTION.

DISTRINGAS.—This is the name which was formerly given to a special class of writ now no longer in use. The term survives, however, as descriptive of a proceeding in the High Court which has been framed to replace and extend the old practice of the writ. It is a proceeding of the utmost pro-

tective value to those persons who have only an equitable interest in stocks and shares. Such persons are found amongst those interested in a trust fund, for example, which comprises stock and shares standing in the names of trustees, and which can be dealt with by the trustees without any regard to those beneficially interested therein. All stock and shares stand only in the name of the trustees, and the companies, having no concern whatever as to the rights of the beneficiaries, allow the trustees to deal with the stocks and shares, to buy, sell, and transfer them, without any restriction whatever. From the point of view of the companies, this system is no doubt a very proper one, for it would never do for them to be required to investigate the *bonâ fides* of every dealing in their stocks and shares; it is sufficient for them that any sale and transfer is by a registered owner. But from the point of view of beneficiaries of a trust fund the system leaves much to be desired, for it makes fraud and misappropriation on the part of trustees an extremely simple matter. It is, however, the fault of the beneficiaries themselves if they thus give their trustees such wide opportunities for misconduct. The proceeding which is still generally known under the name of distringas, is always available for their protection and for the preservation of their trust funds. If all beneficiaries took advantage of it there would be much less fraud by trustees than there now is, and much less consequent poverty and misery inflicted upon those whom the trustees should protect.

For the purpose of a distringas, a "company" would mean, in addition to any public company whether incorporated or not, the governor and company of the Bank of England; and the expression "stock" includes shares, securities, and *dividends* thereon. Government stock standing in the books of the Bank of England would be thus subject to a distringas. Any person who claims to be interested in any stock standing in the books of a company may file an affidavit and notice in the central office of the High Court. The affidavit states that he is beneficially interested in the stock comprised in the trust fund created by a certain settlement, will, or other instrument as the case may be; and the notice, after specifying the stock referred to in the affidavit, proceeds with an intimation that it is intended to stop the transfer of the stock only and not the receipt of the dividends, or the receipt of the dividends on the stock as well as the transfer of the stock. An office copy of the affidavit and notice is then served upon the company, a note being appended to the affidavit stating the person on whose behalf it is filed and to what address notices (if any) for that person are to be sent.

The effect of the service of this affidavit and notice is to make it obligatory upon the company to give notice to the person who has lodged the affidavit and notice whenever the registered holder of the stock desires to transfer any part of it, or to receive dividends thereon if the affidavit and notice include dividends. On receipt of this notice the person who has lodged the affidavit and notice may apply to the court *ex parte*, without notice to the company or the stockholder, and obtain an interim injunction restraining the transfer of the stock or payment of the dividends to enable notice to be served on all parties concerned. This application for an injunction should be made directly the notice has been received, as the company is not bound to refuse to permit the transfer to be made, or to withhold the payment of the dividends, for more than eight days after the date of request therefor has

been made by the stockholder. An appointment is afterwards made by the court for the beneficiary to explain his reasons for stopping the transfer, and if they are sufficient the court will refuse to allow the transfer to be made. Amendments in the affidavit and notice may be made from time to time, as circumstances may require, with regard to the address of the beneficiary and the stock for the time being of dealings in which notice is required. The notice continues to have effect without any further renewal, and it may be withdrawn at any time. *See* ATTACHMENT; CHARGING-ORDER; EXECUTION; and STOP-ORDER.

DIVIDEND.—This is a term used commercially with at least two distinct significations. In one connection it refers to the sum which is divided *pro rata* between the creditors of a **bankrupt** out of the amount realised from his assets, and in this sense each creditor is said to receive his dividend of the estate. Of course the true dividend is the whole amount which is divided, not any part of that amount which, correctly speaking, would be a quotient. This remark applies equally to the class of dividend to be referred to presently; but in view of the now generally accepted application of the word to both the total amount to be divided and each part thereof which is a result of the division, to insist upon a correct use of the word would be but to cause a needless confusion and complication. Notice of the declaration of a dividend in bankruptcy is published at the time in the *Gazette*, and is also sent by the official receiver or trustee to the creditors concerned. In this sense the word dividend would also be applied to the proceeds in course of distribution of an insolvent registered company. It is more usual, however, to use the word "composition" when referring to a distribution in liquidation of his debts by an insolvent debtor under a private arrangement with his creditors.

In **finance** the word is applied to the interest paid by a government, corporation, or company, in respect of loans; and also to the profits which a company distributes among its shareholders. The payment of dividends on British *government stock* is managed by the Bank of England. They are paid in the form of a *dividend warrant*, which is really a cheque for the appropriate amount, and which is sent by post to the registered address of the stockholder: but if there are two or more jointholders it will only be sent to that one of them whose name is first on the register, unless the bank has received written notice to the contrary from any other of the stockholders. If a stockholder desires payment to be made to a person who is not registered as a holder of the parcel of stock in respect of which the dividend is payable, he must execute and lodge at the bank an authority in the form of a power of attorney. Should the stockholder so desire it, the dividends will be paid to him personally at the bank or any of its branches. Unless the Inland Revenue authorities should give instructions to the contrary, the bank will always deduct the income-tax from all dividends of £5 or upwards, and in case a stockholder should find he is paying income-tax twice over, his only remedy is to apply for the return of the excess payment to the Surveyor of Taxes for the district in which he resides. When dividends have lain at the bank unclaimed for ten years, they are transferred to the National Debt Commissioners, who, upon application and proof of his title, will hand them over to their true owner or his personal representative, but without interest. Holders of amounts less than £1000 may instruct the

bank to receive and invest their dividends by filling up forms, to be obtained at the head office, at any of the branches, or at any Money Order Office. A commission is charged of 1d. per £, or part of a £, with 3d. additional for each advice of a purchase should such advice be required. In respect of stock of *foreign governments*, there are varying regulations in force as to the payment of the dividends, but there is generally a bank in London at which the loan is domiciled, and which manages the payment of the dividends.

In private companies, dividends upon debentures are frequently paid to the bearer of an appropriate dividend coupon, or they may be posted in the form of a dividend warrant to the registered address of the debenture holder; or payment may be made in accordance with some special condition of the company, or with some arrangement made with the holder.

The expressions *ex dividend*, *cum dividend*, and *accrued* dividend or interest, are often used in dealings on the Stock Exchange. The first two are regularly seen in connection with the quotation of the prices of various stocks and shares in the lists published in the newspapers, and generally appear in an abbreviated form; thus the stock of a certain railway company may be quoted as "Gt. Eastern, 104 xd," or a certain mining share may be quoted as "Ivanhoe, 7¾xd." The abbreviation xd, which stands for ex dividend, is sometimes abbreviated into ex div., and it means that the price at which the stock or share is quoted is one which allows for the fact that a purchaser thereof will not be entitled to receive the dividend which is just about to be paid in respect of it. Had the stock or share been quoted with the addition of c.d., or cum div.—abbreviations for cum dividend—it would have meant that the price was one which entitled the purchaser to receive the dividend; the absence of an abbreviation having a contrary meaning implies that the quotation is cum dividend. Assuming for example that the Great Eastern stock was carrying a dividend of 4 per cent., its price, if it had been quoted cum div., would have been 106 instead of 104, a difference equal to the £2 then payable in respect of a six months' dividend. Quite apart from any rise in its price due to a general appreciation of its value, that stock, if its normal dividend is 4 per cent., will rise again two points from its ex div. price of 104 by the time the next six months has elapsed and the new dividend of £2 is payable. It will probably rise 1 in three months' time, and another 1 towards the end of the six months. By this means a holder of the stock who sells towards the time for payment of a dividend does not lose the interest he naturally expects from his investment; and on the other hand, a person who buys at dividend time does not gain an advantage not intended for or due to him.

An operator in stocks and shares in respect of which dividends are usually paid, should not assume that the quoted prices on the Stock Exchange are regulated on the above principle of adjustment directly the company has declared its dividend. A dividend is generally first advised by the directors, and some days afterwards adopted and authorised by the shareholders at a meeting of the company. It is at that meeting the dividend is really declared. But this declaration does not affect the Stock Exchange quotation, for it is not until the Stock Exchange committee has officially declared the dividend that the price is quoted in the list ex div. Until then all sales and purchases of a particular stock or share are carried through at the cum div. price, even though the dividend has been in fact declared, and is perhaps in course of

transmission to the seller or prior holder whose name is on the company's register as the proprietor of the stock or share. But when that seller or prior holder does in fact receive the dividend he will be required to hand it over to the purchaser, who has acquired the right to it by paying the cum div. price of the stock or share. In practice, however, the purchaser's broker may have deducted it from the purchase price and held it for his client until it is properly payable to him; or the seller's broker will deduct it or obtain it from his client and hand it over to the purchaser.

Accrued dividend and interest.—It has been pointed out above, in the case of the Great Eastern illustration, that, at the expiration of three months from the payment of a dividend, £1 would be added to the price of the stock in respect of the dividend then in course of growth. Such an addition to the price is said to be in respect of accrued dividend. In the case of many securities, especially foreign ones, the question of interest does not enter into that price, both being dealt with separately. Accordingly, in a case similar to our illustration, the price would not have been advanced £1 in the quotation, but would have remained as before; on a sale, however, the £1 accrued interest or dividend would be required to be paid, though as a separate transaction. Sometimes sales in such securities are carried through without any regard whatever to dividends, other than so far as they constitute an element in the price; securities so sold would be called *clean*. *Interim dividends* are frequently distributed to the shareholders of companies earning a sound and constant profit, for under other circumstances directors would not be justified in anticipating the subsequent events of the financial year. They are in effect a distribution of the profits of a company in advance, before the accounts for the year have been made up and the final dividend declared.

Coupons.—When a stockholder wishes his banker to collect the dividend payable upon a coupon, he should pay it into the bank ten days before the day of the date of its maturity, in order that the bank should have a proper opportunity to present it without delay. When so paid into a bank it should not be "crossed," for if this is done and the coupon happens to be returned unpaid, the holder would probably have a difficulty in selling the security to which it belongs upon the Stock Exchange, for a purchaser's broker might refuse it on the ground that the security with the coupon so marked is "bad delivery." If the dividends are in respect of a foreign security, and are payable in England or abroad at the holder's option, he, when about to present his coupon, should consider the course of exchange, so that it may be presented at home or abroad according to the mode made profitable by the current rate of exchange. In such a case he should give his banker specific directions as to the presentation of the coupon. Coupons should be presented in numerical order. Occasionally, securities are issued without having attached to them a sufficient number of coupons to last out the term during which the security is intended to subsist. In such cases there is usually affixed to the security a **talon**, which should be presented at the domicile of the security as soon as the coupons are exhausted; a further supply of coupons will then be furnished. Where there is not a talon the stockholder should under such circumstances apply for further coupons, and at the same time produce his security.

DIVORCE is the legal term for a full and complete dissolution of a lawful marriage. Until 1857 there were in England two kinds of divorce, viz. that which was known as a divorce *à vinculo matrimonii*—"from the bond of marriage," and that known as divorce *à mensâ et thoro*—"from bed and board." Only the former kind is now properly within the meaning of the term "divorce," the latter being now known as a JUDICIAL SEPARATION (*q.v.*). The court having jurisdiction in England in divorce causes is the Divorce Court of the Probate, Divorce, and Admiralty Division of the High Court. It obtains this jurisdiction as being the court to which statute has assigned all causes in "matters matrimonial in England," and in addition to divorce proceedings it is the appropriate and exclusive court for the prosecution of suits for judicial separation, nullity of marriage, restitution of conjugal rights, and jactitation of marriage. The last of these suits is a survival of the jurisdiction of the Ecclesiastical Courts, and is the one to be brought by a person who is aggrieved because some other person has boasted or given out that he or she is married to her or him.

Proceedings in England and Wales for a divorce can only be instituted in the Divorce Court in London. No other court has any jurisdiction. The result is that the expense of a High Court suit, and the expense and inconvenience of attending with witnesses a trial in London, deter many who reside in the provinces from availing themselves of the advantages of the law. The cost of obtaining a divorce, even in an undefended case, may be placed at about £30—a sum obviously beyond the control of the greater part of the population. But a person who is not worth £25, apart from his or her wearing apparel, may obtain leave to prosecute divorce proceedings *in forma pauperis*; but to obtain this leave an affidavit of means must be first made, and counsel's opinion obtained that there is reasonable ground for the suit. The cost of this preliminary step would be about £3. Being without £25 is only *primâ facie* evidence of "pauperism," and before the court grants leave to proceed *in forma pauperis* it requires to be satisfied that the case of the applicant—from a pecuniary point of view—is a *bonâ fide* one. If the court were not to take this strict and reasonable view, many persons living in great splendour and luxury would be entitled to sue as paupers; many persons in business or in private life enjoying an immense income and maintaining a proportionate expenditure are not worth £25 after the payment of their just debts. Apart from this, the court is bound to check vexatious litigation. Upon being admitted to proceed as a pauper, the applicant is not required to pay any court fees, solicitor's charges, or fees for counsel. Solicitor and counsel must give their assistance gratis, but of course the applicant is bound to pay such incidental expenses as those of his own and his witnesses' travelling and attendance at the court, and of the collection of evidence.

A suit for divorce is commenced by a petition presented to the court by the applicant, who is thenceforth called the petitioner. The other parties are then summoned to the suit by a document called a citation; the married one of these other parties is called the respondent, the remainder, those with whom the respondent is alleged to have been guilty of misconduct, being the co-respondents. The only ground upon which a husband can proceed for a divorce is that of adultery. He may also include in his petition a claim for

damages against the co-respondents. When the proceedings are by the wife for a divorce from her husband, she can only proceed upon one or more of the following six grounds: — (*a*) Incestuous adultery; (*b*) bigamy with adultery; (*c*) rape; (*d*) sodomy or bestiality; (*e*) adultery and cruelty; (*f*) adultery and desertion. Incestuous adultery is adultery by the husband with a woman with whom, if his wife were dead, he could not lawfully contract marriage by reason of her being within the prohibited degrees of consanguinity or affinity. Adultery with a wife's sister would accordingly be incestuous. Bigamy is the marriage of any person, being married, to any other person during the life of the former husband or wife, whether the second marriage has taken place within the dominions of his Majesty or elsewhere. The bigamy with adultery would be adultery with the person with whom the bigamy is committed; bigamy with one woman and adultery with another is not therefore "bigamy with adultery." Cruelty must be such as would be sufficient to alone support a petition for judicial separation; and should a judicial separation have been already granted for cruelty and the husband subsequently commits adultery, that further misconduct will revive the original cruelty and enable the wife to obtain a divorce upon the ground of adultery and cruelty.

Adultery and desertion are a ground for divorce when the desertion has been without reasonable excuse for upwards of two years. The question of what amounts to desertion is often a difficult one. To desert is to forsake or abandon. But what degree or extent of withdrawal from a wife's society constitutes a forsaking or abandonment of her? This is easily answered in some cases, not so easily in others, for the degree of intercourse which married persons are able to maintain with each other is various. It depends on their walk in life, and is not a little at the mercy of external circumstance. It is therefore obvious that the test of finding a home for the wife and living with her is not universally applicable in pronouncing "desertion" by the husband, nor is any other test possible which is suitable to all cases. So long as the husband treats his wife, as a wife, by maintaining such a degree and manner of intercourse as might naturally be expected from a husband of his calling and means, he cannot be said to have deserted her. To follow an occupation such as that of a sailor or soldier would not constitute a desertion. Nor would a separation by mutual agreement. But to so act as to force the wife to renounce cohabitation would be a desertion. Though leaving a wife without the means of livelihood would be in general a desertion, yet the mere fact of continuing to support her would not negative the probability of desertion where the acts and intention of the husband are clear. It should be remembered that desertion is only possible where the forsaking and abandonment, or acts equivalent thereto, are against the will of the wife.

Bars to a divorce are of two classes—absolute and discretionary. *The absolute bars* are (*a*) controversion of the misconduct relied upon in the petition; (*b*) connivance; (*c*) condonation; and (*d*) collusion. Connivance is not limited to the literal meaning of wilfully refusing or not affecting to see or become acquainted with that which one knows or believes is happening or about to happen. It includes the case of a husband acquiescing in, by wilfully abstaining from taking any steps to prevent, that adulterous intercourse which, from what passes before his eyes, he cannot but believe or reasonably

suspect is likely to occur. But it is an expression inapplicable to anything past or future; it is limited to some present act or conduct. If a husband, ignorant at the time of his wife's infidelity, afterwards discovers it and leaves it unnoticed and unpunished, whatever be the motive of his silence, he cannot be said to connive even at the past adultery, much less at any future intercourse of the guilty parties. The clearest connivance may be said to be the passive sufferance of adultery for a considerable length of time.

Condonation is the forgiveness of a conjugal offence, the person forgiving having at the time a full and complete knowledge of all the circumstances connected with it. A return to matrimonial cohabitation is a necessary part and result of the condonation. A return to such cohabitation is strong evidence of a husband's condonation, but not so strong of a wife's. She is considered to be more under the power of her husband; she may entertain more hopes of the recovery and reform of her husband; her honour is less injured, and is more easily healed. A husband is not bound to remove his wife out of his house upon discovery of her guilt; it is sufficient if he ceases conjugal cohabitation. Desertion may be condoned as well as adultery, but the condonation of one does not act as a condonation of the other; the offence uncondoned may be therefore a ground for proceedings. *Collusion* is an agreement between the parties to a matrimonial suit that certain facts relevant to the case should be withheld from the notice of the court. Thus where a married couple desire a dissolution of the marriage, though each of them is guilty, it would be collusion for either to agree with the other not to set up the fact of that other's guilt. The object of this collusion is to obtain a decree which the court would probably not otherwise grant. Collusion is often a ground for the intervention of the King's Proctor. For a husband to pay money, or cause it to be paid, to a person to commit adultery with his wife in order that he may obtain a divorce, would be collusion; so would adultery by the husband himself, committed for the purpose of assisting his wife to obtain a divorce, and with his wife's acquiescence.

Discretionary bars.—These are different in their effect to the absolute bars we have just considered. The existence of the latter absolutely prevent the granting of a decree, while the existence of the former leaves to the court a discretion whether, under all the circumstances of the particular case, they are of such a nature as to have that effect. These discretionary bars are as follows:—(*a*) adultery by the petitioner during the marriage; (*b*) unreasonable delay on the part of the petitioner in presenting or prosecuting his petition; (*c*) cruelty towards the other party to the marriage, or deserting or wilfully separating himself or herself from the other party before the adultery complained of, and without reasonable excuse; or (*d*) such wilful neglect or misconduct as has conduced to the adultery. Unreasonable delay is often excused on the ground of the poverty of the petitioner, and of his having required some considerable period of time wherein to save the money for the costs of the divorce.

The decree.—Upon the hearing of the suit the judge has a discretion to only grant a judicial separation, if he considers the facts of the case to warrant no more, and not to decree a divorce. If a divorce is granted, it is first of all in the form of a *decree nisi*, that is to say, the decree is subject to be set aside in case further facts are brought, by any person at all, to the notice of

the court—such as evidence of collusion—which make the case appear to be an improper one in which to grant a divorce. After the expiration of six months from the date of the decree *nisi*, application may be made for the decree to be made *absolute*. This will be done if there has been no intervention to stop it, and the marriage will then be dissolved. Until the decree has been made absolute, neither of the married couple is in a position to contract another legal marriage.

Generally.—During the pendency of the suit, the court will order the husband to make the wife an allowance known as ALIMONY. After the decree an order may be made for payment of a permanent allowance to an innocent wife, and also as to the custody, maintenance, and education of the children. The allowance will be made according to the financial position of the husband, and it may take the form of a weekly or monthly payment by the husband during their joint lives. It may be increased or decreased by the court from time to time according as the position of the husband may vary. Under the Matrimonial Causes Act, 1907, the court may order a lump sum to be settled upon the wife. If the wife has been a guilty party, and is entitled to any separate property, the court may make an order for a settlement thereout for the benefit of the husband and the children of the marriage. A supplementary inquiry may also take place as to the existence of any ante-nuptial or post-nuptial settlements made on the parties whose marriage is the subject of the decree; and as a result of the inquiry the whole or a portion of the property settled may be applied either for the benefit of the children of the marriage, or of their respective parents. Unless the wife has separate property of her own, or the husband is absolutely without means, the husband is liable for *the wife's costs* of divorce proceedings. If the wife is proceeding with a petition against the husband, she should, as soon as the mode of trial is fixed, apply to the registrar of the court for an order for her costs. These costs will be then fixed at a certain sum to cover the costs up to and including the trial, and the husband will be ordered to pay them into court or give security therefor. She should not wait until trial for this order, as it may be then more difficult for her to obtain. This rule applies also to some extent to a case where the wife is respondent, but the court would be here very careful not to improperly saddle an innocent husband with their payment if her defence were not *bonâ fide* or was not justified by its nature.

In Scotland a divorce may be obtained by either party upon proof of adultery or desertion, and the jurisdiction of the Scotch court is founded on the husband having a true and permanent domicile in Scotland; residence for forty days does not give jurisdiction in divorce. As in England, proof is necessary in all actions even when they are undefended; and in any action the Lord Advocate is entitled to appear in order to prevent collusion. If the husband is proceeding against the wife, he must furnish her with the means of defending herself; but if her defence is unsuccessful and she has separate estate, she is not entitled to her expenses. *See* MARRIAGE; HUSBAND AND WIFE.

DOCK WARRANT.—When goods are warehoused at the docks upon their importation, they are entered in the warehouse books in the name of the importer. To him is then given a certificate, called a dock warrant, which contains the same particulars of the goods as the Landing Account, and states that they are deliverable to the owner or his assigns by indorse-

ment thereon. By modern mercantile practice, judicial recognition, and ultimately by the Factors Act, 1889, a dock warrant has become what is known in law as *a document of title*. By this expression is meant a document used in the ordinary course of business as proof of the possession or control of goods, or authorising, or purporting to authorise, either by indorsement or delivery, the possessor of the document to transfer or receive goods thereby represented. A dock warrant is liable to a stamp duty of 3d. An indorsement of a dock warrant operates to transfer to the indorsee the actual property of, and possession in, the goods it represents. The indorsee, or the original owner if it has not been transferred, is entitled to present the dock warrant at the warehouse and to demand delivery of the goods; but it is a usual practice for its holder to leave the warrant at the warehouse, and to take possession of the goods as he may require them by means of a DELIVERY ORDER (*q.v.*).

The holder of the dock warrant being thus entitled to at once present it at the warehouse and obtain delivery of the goods he has bought, is in this respect in a somewhat different position to the holder of a BILL OF LADING (*q.v.*), who, on account of the goods being in course of transit, is unable to at once obtain possession of them. For this reason the law distinguishes somewhat between the two documents. The holder of the dock warrant who has obtained it, as a buyer of the goods it represents, direct from the person to whom the warrant was issued and who would be in this case the seller of the goods it represents, is not really the holder of a document of title as would be a similar holder of a bill of lading. He is merely the holder of an offer or authority to receive the goods, and the person to whom the warrant was issued, and who is the seller to him of the goods it represents, is entitled to stop the delivery of the goods to the buyer in case any part of the purchase is remaining unpaid. But in a case where the dock warrant has been regularly transferred by that buyer to a third person who has taken it in good faith and for a valuable consideration, the seller loses the before-mentioned right of stoppage. And so also in cases where the third person has in his turn indorsed it to further holders for value.

And particularly it is so in cases where the original owner of the dock warrant has given it into the possession of a factor, middleman, or other similar class of third party, and when the latter has transferred or pledged it. The general position in such a case as the last is that if a mercantile agent is, with the consent of the owner, in possession of documents of title to goods, any sale or pledge of the goods made by him is valid, unless the person taking under the sale or pledge had notice that it was unauthorised; in the absence of evidence to the contrary the consent is to be presumed. If a dock warrant is stolen, not even a *bonâ fide* holder for value, who has taken from the thief, acquires a good title to the goods; he is, however, protected from stoppage *in transitu* in respect of the vendor's lien. Together with the warrant, the warehouse authorities may deliver to the importer a *weight note*; where this is done, the goods will not be delivered up as against the warrant without its corresponding weight note. *See* also hereon: FACTORS; DELIVERY ORDER.

DOGS.—Criminal liabilities.—Whoever *steals* a dog is liable to six

months' imprisonment with hard labour, or to forfeit the value of the dog as well as an additional sum of £20. Should any one who has been formerly convicted of this offence again be convicted, his punishment may be eighteen months' hard labour. Whoever unlawfully has in his possession or on his premises any stolen dog, or its skin, knowing that the dog has been stolen, is liable to a fine of £20; and upon a second conviction he may be imprisoned with hard labour for eighteen months. And the same punishment is meted out to the man who corruptly takes any money or reward, directly or indirectly, under pretence or on account of aiding any one to recover any dog which has been stolen or which is in the possession of any person who is not its true owner. Any one found in the possession of a stolen dog, or its skin, may be ordered by the magistrates to return it to the true owner. *Injuries by dogs.*—Should a dog injure any cattle, the owner of the latter can take proceedings before the local magistrates and recover damages therefor, not exceeding £5, from the owner of the dog. But he need not pursue this course if he prefers to exercise his common-law right of proceeding in the ordinary courts of law for damages, whatever the amount thereof may be. The occupier of any house or room, where the dog was kept or permitted to live at the time of the injury, is presumed to be the owner of the dog and liable for the injury, unless he proves he was not the owner of the dog at the time. Where there are more occupiers than one in any house or premises let in separate apartments, or lodgings, or otherwise, the occupier of that particular part of the house or premises in which the dog has been kept or permitted to live or remain at the time of the injury is presumed to be the owner of the dog. And in these proceedings before the magistrates it is not necessary to show a previous mischievous propensity in the dog, or its owner's knowledge of such previous propensity, or that the injury was attributable to his neglect.

A dog which is straying on any highway, or place of public resort, may be seized by a constable and detained until claimed, and all the expenses of the detention have been paid by the owner. [*And see* Appendix.] No one may use, or being the owner permit, a dog to draw or help draw a carriage, cart, truck, or barrow along a public highway; to do so is to incur a fine and imprisonment in default of payment. For the law relating to cruelty to dogs, *see* ANIMALS (Appendix).

It is necessary for the owner of dogs to take out *a licence* in respect of each dog above the age of six months which he keeps. The licence costs 7s. 6d., is generally obtainable at, amongst other places, the local post-office, and expires on the 31st day of December in every year without regard to the date upon which it is taken out. The licensed person is bound, under a penalty, to produce the licence upon demand to any excise officer or constable. It is the owner who is licensed and not the dog, so that it follows that if a licensed owner sells his dog the purchaser thereof must take out a licence for himself. For the purpose of deciding who is liable

to take out a dog licence, the prosecuting authorities need not prove that the person charged is the dog's owner; it is sufficient if he is proved to be the keeper of the dog—that the dog has been found in his custody, charge, or possession, or in his house or premises. The penalty for keeping a dog without a licence is a fine not exceeding £5, and in default of payment imprisonment. The fine is incurred in respect of each dog kept in excess of the number for which the owner is liable. It is no answer to the charge to produce a licence which has been obtained since the discovery was made of the default in respect of which the prosecution is based; and to provide against any doubt in such cases the Inland Revenue authorities stamp the licence with the hour of the day on which it is issued. The dogs of blind men are exempted from duty, so also are puppies under the age of six months, and hounds under the age of twelve months which have not been entered in or used with any pack. A certificate, of a petty sessional court, of exemption may be obtained in respect of a shepherd's dogs up to a certain number.

Civil rights and liabilities in respect of dogs.—A dog being as much the property of its owner as any other land or things which may belong to him, it follows that he is entitled to obtain damages in respect of any injury done to it from the wrongdoer. And in this connection the fact of the property being a dog makes little or no difference to the owner's rights. He may sue for damages, and it is immaterial whether the injury has been done by the defendant himself or his servants by his direction. But the fact that the property is a dog may be very material in considering its owner's liabilities in respect thereof. If the dog is one used to worrying postmen or the like, the owner must answer for the consequences, if he knows of the evil habit. It is often said that every dog is entitled to his first bite; this is not however entirely accurate, for it really only means that the owner of the dog is entitled to be relieved from liability until after his dog has given some evidence of a vicious and dangerous disposition. A former biting by the dog is such evidence. But it would be quite possible to prove in other ways that the dog was of a vicious or dangerous disposition and would be likely to bite, and that its owner knew or had reasonable opportunities for knowing; this having been proved, a person upon whom the dog had exercised its alleged privilege of a first bite would be entitled to damages from its owner. The liability for a dog is not limited to its owner; it rests also, to the same extent, upon the person who keeps it, or whose premises the dog is allowed to frequent. To put up a notice, *Beware of the dog*, will not exclude its owner from liability to any person injured, who could not read, or did not in fact read, the notice, and was lawfully on the premises. No one is justified in shooting the dog of another, simply because it is of a ferocious and dangerous disposition. Should he do so, he will be liable to the dog's owner, unless he can show that the dog was actually attacking him at the time he used the gun. Only under such circumstances can the shooting of another's dog be justified.

DOMICILE, or **DOMICIL**, has been well said to be *the legal conception of residence;* that is to say, it is a term having the meaning of residence in the sense the latter word is understood by the courts. The word residence may be used, therefore, in at least two different senses: one, in the sense in which it is used in everyday speech; another, in the sense in which it is used

by the judge and the law. When the word residence is used by the latter, its significance is then the same as that attached to it by the layman—it means simply the place where a person is for the time being residing or has his habitation, without regard to any effect upon his legal rights and obligations which that place may have. In an ordinary contract between two persons, each residing in London, for work to be done and paid for in London, the residence of either of the parties is not a legal incident of the contract, and does not affect the rights of the parties thereto. In such a case "residence" is a word used with the same meaning both in the law and in everyday conversation. So used, the word residence is essentially ambiguous in its meaning, and if it should be necessary to obtain a precise meaning, that will be found in the facts of the particular case. This necessity for a precise meaning is often imposed by statute or agreement. Thus if a statute, such as the Bills of Sale Act, requires particulars of the residence of the grantor or attesting witness of a Bill of Sale, the place where the person usually sleeps, usually carries on business, or is usually to be found, would be within the meaning of the term residence. On the other hand, the Bankruptcy Acts use the word residence as opposed to an employee's place of business.

But the word *domicile* has a legal significance very different to that of residence, though it essentially depends upon the idea of residence in the ordinary sense of the word. And this significance becomes of utmost importance under various circumstances. Two different divisions at least may be fairly made out, in each of which the domicile of an individual assumes an important position. In the first place, it is of importance in questions arising under International Law; in the second place, in questions arising under a CONFLICT OF LAWS. With regard to International Law, it may be stated as a general rule that the property of all persons domiciled in an enemy's country, whatever be their nationality, is subject to the severities of war, and if those persons remain in an invaded district they may be called upon to render certain services for the invaders. Domicile, as well as citizenship, is the great test of enemy character, and for this purpose the place of a man's settled home and his permanent residence may be taken as conclusive evidence of his place of domicile. As a subject of International Law, however, domicile does not here very materially concern us; it is as a factor in the conflict of laws that it will be here dealt with. A glance at the article on the conflict of laws will show the importance of a man's domicile. This is in all cases the criterion established by the law for the purpose of determining his personal rights. Upon it depends, for example, the period during which his minority may last, the age at which his majority may be attained, and his capacities or incapacities in respect thereof; his capacity to marry, and the laws and forms incident to his legal marriage; his succession or otherwise, on the death of a relative, to land, shares, goods, and other estate; and his capacity to enter into contracts, their form, and the rights he may possess to enforce them or obtain compensation for their breach.

Definition.—A person's domicile is that place where he has his true, fixed, permanent home and principal establishment, and to which, whenever he is absent, he has the intention of returning. But this definition cannot be taken as conclusive—in fact, none can. At the best a definition of domicile can only be suggestive and indicative. One particular class of cases, called

Health Cases, would alone make definition almost impossible. Of this class of cases there are two, of which one is an example of the acquisition by the invalid of a new domicile, the other of the retention of the old domicile. In the first example, an invalid Englishman, having an English domicile, finding that his health suffered from the English climate, went to France with the intention of residing there permanently or indefinitely; the courts held that he had acquired a French domicile because he took up his residence in France with the intention of remaining there. For a second example, one wherein a new domicile was *not* acquired, reference may be made to the case where a domiciled English invalid went to Madeira in a dying state in order to alleviate his sufferings, and without any expectation of returning to England. A man might leave England with no intention of returning—nay, with a determination never to return, *e.g.* a man labouring under mortal disease, and told that to preserve his life, or even to alleviate his sufferings, he must go abroad. Can it be said that if he goes to Madeira or elsewhere he cannot do so without losing his character of a domiciled Englishman—without losing the right to the intervention of the English law in the transmission of his property after his death and in the construction of his testamentary instruments? Such a proposition, said a learned judge, is revolting to common sense.

Domicile and nationality.—These two conditions should not be confused. A German, for example, who is a German subject, may acquire a domicile in England, and he does not thereby lose his German nationality. An Englishman, for another example, who is a British subject, may acquire a domicile in France, and thereby lose his English domicile. The question of domicile need have no reference to nationality; its importance arising in conflicts between the laws of different countries. The law of England, and of almost all civilised countries, ascribes to each individual at his birth and during his life two distinct legal states or conditions. One of these is that of nationality, by virtue of which he is born, or becomes by special statute, the subject of some particular country, bound to that country by the tie of allegiance; this is his political status. The other of these conditions is that of domicile, the subject of this article. It is by virtue of this that a man has ascribed to him some of the attributes of the character of a citizen of some particular country, and as such is possessed of certain local legal rights, and is subject to corresponding obligations.

Constitution and ascertainment of domicile.—Two things are necessary for the constitution of a domicile—first, residence; and secondly, the intention of making it the home of the party. It is not mere residence at a place which makes it a domicile, but there must be added thereto an intention to remain. So long as there exists an intention to return to the place of original domicile, a new domicile cannot be said to have been intended or created. Reference has already been made to the "health cases"; it will therefore be sufficient to now briefly allude to some other circumstances under which a question of domicile may arise. To merely leave home for a temporary purpose, to go abroad for business, to go on a sea voyage, or to travel for health, will not alone constitute a fresh domicile; and until that fresh domicile is constituted the old one continues. No man can be without a domicile, nor can any one have more than one domicile at the same time. But here it

must be pointed out that the question of domicile is always *relative* to the subject-matter of the case which involves a conflict of law. Thus in a case which hinges upon the matrimonial domicile of a party a less conclusive kind of domicile may possibly be accepted than in a case relating to an intestacy, for example. From this point of view it may be laid down as a possibility that a man may have more than one domicile.

Change of domicile.—There may be said to be three sorts of domicile: (1) That of birth, or of "origin." As a general rule, a person has an original domicile in the place where he is born, it being immaterial whether his parents are ALIENS (*q.v.*) in that place or subjects thereof. But this rule would hardly extend to cases of a birth when the parents are in the foreign place for temporary purposes only, or are there in the course of a journey, or for health, and without having a domicile there. (2) The second is that domicile which is voluntarily acquired by a person. It is the consideration of this sort of domicile that is mainly the subject of this article. (3) That which is sometimes known as consequential domicile, as where a woman marries, for thereby she acquires the domicile of her husband.

Ambassadors and diplomatic ministers do not acquire a new domicile in consequence of a foreign residence. As a general rule, consular officers are in such a position that they may lose their original domicile in the same way as other persons; but this rule would not extend to salaried consular officers. When a child is born upon the high seas its domicile is that of its parents. The domicile of a child continues to be that of its parents until it changes it; but this it cannot do during its minority. A widow's domicile is that of her husband until she changes it.

In the case of a married man, the place where he keeps his home and family is considered to be his domicile; and that is so if he keeps up more than one establishment, or is in the habit of himself moving about. Should a man, whether married or not, have more than one establishment in the nature of a home, that one will constitute his domicile which he holds out as his principal place, and in respect of which he maintains and exercises his rights of a citizen, and which he makes the centre of his business affairs. An unmarried man is usually deemed to make his place of business his domicile. The most effective method of changing a domicile is to openly remove from the old to the new with an avowed intention of acquiring a new domicile in the latter place. Intention to acquire a new domicile is ineffective unless accompanied by a permanent settlement in the new place. There is no length of time necessary to constitute a domicile, the only tests being, as we have already pointed out, (1) a settlement or residence; (2) an intention to remain there. But the abandonment of the acquired domicile is not complete until the person has actually left the country.

Some special cases.—There are two presumptions with regard to domicile which merit attention; the effect of these is to lay upon a party who desires to establish the fact of an acquired domicile the burden of proving it. These are: (*a*) *primâ facie*, the place where a person lives, or has his home, is the place of his domicile; (*b*) a person who resides in another country in the military, naval, or civil service of his sovereign, has not thereby changed his domicile. It is more easy to infer a change of domicile from one country to another, subject to the same sovereign, than from one country to a foreign

country; it would accordingly be easier to prove a change of domicile from England to Scotland than from England to Russia. But if, under all the circumstances of the particular case, there is every probability that a person would naturally desire to change his domicile, it will not be very difficult to prove his intention to do so even if the acquired domicile is in a foreign country. There was such a case where a man had a Portuguese domicile of origin, but his family was English and he had always been brought up in England, and always expressed a dislike to Portugal and a desire to leave it.

To express a wish to be buried in a particular place is not usually regarded as an important circumstance in questions of domicile—not even in the following case: An Englishman married a Frenchwoman and resided in Paris; there his wife died, and he purchased a place of interment for her there, and expressed his determination to be buried in the same place himself. But a Frenchman who refused to be naturalised in England on the ground that he might return to reside in France, and who would not give up his French citizenship, was held nevertheless to have acquired an English domicile. And so also was a Frenchman who had repeatedly declared that when he had made his fortune he would return to France. Such declarations of intention were held to be too vague and indefinite to prove a real intention to return to France, and to outweigh actions which showed an intention of permanent residence in England. *See* ABANDONMENT.

DOMICILED.—The investor in the securities of foreign governments or corporations will know that these securities are usually issued in England by some important financial house or bank, which, in addition to the issue, undertakes the payment of the dividends on behalf of its foreign principal. Such a security is said to be domiciled with that financial house or bank, and it is there that the investor should present his coupons for payment of the dividends, or obtain payment of the principal sum in case of a redemption. The places of domicile of the various foreign securities are always to be found in the usual books of reference on financial matters. The word is also used to denote the place at which a bill of exchange is payable, when such place is other than the place of abode or business of the drawee. In its legal sense, the word is considered in the article on DOMICILE.

DONATIO MORTIS CAUSA.—Besides formal legacies bequeathed by, and contained in, a man's will and testament, the law also permits a certain favoured deathbed disposition of property. Such a disposition is called a donation *mortis causa*, or a gift made in contemplation of death. It would occur in the case of a person in his last sickness, apprehending his near dissolution, who delivers or causes to be delivered to another the possession of any personal goods, to keep in the event of the donor's decease. This gift, if the donor should die, does not need the assent of his executor. But it has no effect as against the deceased's creditors in case he should not leave a sufficiency of assets to provide for his debts. And the gift is accompanied, moreover, with this implied trust, that if the donor lives the property thereof shall revert back to him, the gift having been made in contemplation and to take effect in the event of his death. The trust reposed in the donee that he shall return the gift in case the donor does not die may be, as we have seen, an implied one, and consequently it is not necessary that the donor should expressly make that condition when making

the gift. And it follows from this, that on the other hand an absolute and irrevocable gift, where no such trust or condition can be implied, is not a donation *mortis causa*. As the donee does not require the executor's assent to the gift, there is no necessity for probate in respect thereof; but the property given is liable to estate duty, and he must also pay legacy duty therefor.

There has been a great deal of litigation and much learned argument as to what property can or cannot be the subject of a donation *mortis causa*; and with it all, there is still no general principle which may be applied to all cases. But, as some assistance in forming an opinion, it may be accepted that anything may be the subject of a donation *mortis causa* the title, or evidence of title, to which can pass by delivery. Thus the receipt for an annuity which is no part of the title to it, or the scrip certificate for railway stock, is not sufficient to carry with it a property in the annuity or the stock, when given as a donation *mortis causa*; a gift of the donor's own cheque would probably avail nothing (*re Beaumont, Beaumont* v. *Eubank*). But on the other hand the gift of a deposit receipt (even though non-transferable), deed of mortgage, policy of insurance on the donor's life, the key of a box containing property, or a bond, would carry with it the gift of the property evidenced by the document or article given. And so would a gift of a third party's cheque, bill of exchange, or promissory note payable to the donor's order, even though not indorsed. Of course an actual delivery of the property itself by the donor to the donee would be without doubt a good donation *mortis causa*, as in the case of money, furniture, pictures, jewellery, bank-notes, Though delivery of the property is an essential element in the validity of a donation *mortis causa*, it will be sufficient if the delivery is made by some other person at the donor's special request, and to even an agent of the donee.

Two cases on this subject may be useful. In one, where the key of a box containing bonds, labelled "The first five of these bonds belong to and are H. D.'s property," was given into the custody of H. D., who was the deceased's housekeeper, it was held that the key was given to her by the deceased in her character of a housekeeper, and for the purpose of taking care of it for the deceased's benefit; and that whether or not he meant to give the bonds to her, there had been no actual transfer thereof: the housekeeper did not, therefore, get the bonds. In the other case, the donor, being in his last illness, ordered a box containing wearing apparel to be carried to B.'s house to be there delivered to B., but the donor gave no further directions concerning it; on the next day, however, B. brought the key of the box to the donor, and the latter told him to take it back, saying that he should want a pair of trousers out of the box: this was not a good donation *mortis causa*, as the box was left in B.'s care for safe custody, and was so considered by B. himself. *See* EXECUTORS.

DOUBLE-ENTRY is the name given to that system of book-keeping which is based upon the principle that in every business transaction (as *e.g.* an exchange of cash for goods) there is simultaneously both an increase and a decrease of property (*e.g.* an increase of goods and a decrease of cash), and that the increase and decrease are equal. In book-keeping by double-entry both these effects are always entered. Book-keeping has for its foundation the primary axiom of science, that the whole is equal to its parts. It con-

siders property as a whole composed of various parts: a stock account may exhibit the capital collectively, that is, in one mass; the other accounts exhibit its component parts. Double-entry is also known as the Italian system of book-keeping, for it was used by the merchants of Genoa, Venice, and other Italian towns long before it was introduced into England. The celebrated Fuggers, whose commercial transactions extended all over Europe, kept their books and accounts by this method, and there is, in a private library at Augsburg, a ledger of Anton Fugger bearing date 1492, which does not differ in principle from those now in use. The other and most common form of book-keeping is that known as single-entry, but this form is bound to give way to double-entry wherever accuracy and facility of reference is a desideratum to the man of business. By the use of double-entry the accuracy of book-keeping is most effectively tested, for the entries on the debtor side of the ledger being equal to those on the creditor side, their respective totals ought as a matter of course to balance. Without double-entry the property of the trader can only be ascertained by taking stock; with it, the amount of stock can at all times be extracted from the ledgers, and need never be the subject of special calculation. To obtain the advantages of double-entry, the trader whose books are already kept on the system of single-entry has no need to throw over that system altogether; for all practical purposes it will be sufficient if he proceeds to enter up his journal on the principle of double-entry, opens a few necessary impersonal or nominal accounts in his ledgers, and every month or so makes his transactions the subject of a summary.

To understand the principle of double-entry is to really know its practice. The trader must learn to consider himself—his personality—to be an individual as distinct from, and independent of, his business as any one of its customers. He must be represented in his ledgers and books of account by *agents*. Thus "stock," "profit and loss," "capital," "cash," "plant," "business premises," "sundries," &c., may each have its separate ledger account, and will there be an agent for the trader. Following out this idea, when he receives say £100 on settlement of a debt due from A., he will not only credit A.'s account with that amount, but will debit it to the account of "cash." In the same way a purchase or sale of goods entails a double-entry. If the trader has sold some tea to B. on credit he debits B.'s account therewith, and credits "stock" or "tea" account with the tea sold. An examination of his books will now at a glance show him his exact position for the time being how much stock, or particular class of stock, he has on hand, and how much profit or loss he has made on its turnover; how much cash there is on hand, how much at his banker; how, in fact, he stands generally with regard to his business, or particularly with regard to any special branch or detail of it. Of course the primary entries in either of the supposititious cases we have referred to above are made in the waste-book, and the journal or day-book, and it is from these entries that the appropriate ledger accounts are credited and debited as the case may be. If a purchase or sale is made for ready money, or an exchange of one kind of goods for another, the trader must observe as a guiding rule that what he receives is Dr. to what he gives or parts with. A purchase of tea for ready money would be accordingly entered in the journal on the principle of "Tea Dr. to

Cash;" had the transaction been a sale, then the principle of the entry would have been "Cash Dr. to Tea." In all cases the journal should specify exactly the quantities, prices, and amounts. When the same account is made up of two or more persons or things, it is usual to describe them in the journal under the heading of "Sundries," or "Sundries Accounts," but at the same time to specify the particulars. *See* BOOK-KEEPING.

The following are some old rules which have been given for distinguishing the trader's Dr. and Cr., and which will apply to all cases: (1) The person to whom or for whose account he pays, or furnishes the means of payment, is *debtor;* (2) The person from whom or for whose account he receives, or who furnishes him with the means of payment, is *creditor;* (3) Everything which comes into his possession or under his direction is *debtor;* (4) Everything which passes out of his possession or from under his direction is *creditor;* (5) In, *debtor;* out, *creditor.* In the article on the JOURNAL is shown the mode in which the *double* entries are set out therein, and in the article on the impersonal ledger will be found the manner in which the impersonal or so-called fictitious half of these entries is finally dealt with.

DOUBLE PRICES.—The reader of the prices of Stock Exchange investments, as quoted in the financial column of his newspaper, is at once struck by the fact that the securities mentioned therein are invariably quoted with a double price. Thus North-Eastern Railway stock may appear at $155\frac{1}{2}-6\frac{1}{2}$, De Beers at $42\frac{5}{8}-\frac{7}{8}$, Wild-Cats at $\frac{1}{8}-\frac{3}{8}$, or Welsbach at 13—15; the first two securities being quoted in an abbreviated form for $155\frac{1}{2}-156\frac{1}{2}$ and $42\frac{5}{8}-42\frac{7}{8}$. The explanation of this double price is a very simple one, namely, that the lower price is the one at which the investor may sell his security on the Stock Exchange, whilst the higher price is the one at which he may buy it there. That there should be these two prices for the same stock or share in the same market is often a source of wonder to the investor. And very often too is he filled with some dismay when, not knowing the real effect of the double price, he sells say 500 Wild-Cats when the price stands at the same figure as it did when he bought them. Supposing that the price at which they stood when he bought was $\frac{1}{8}-\frac{3}{8}$, he had consequently paid £187, 10s., having paid for them at the rate of $\frac{3}{8}$ each; but though the price is still the same when he sells, he discovers, when he hears from his broker, that they have realised only £62, 10s. He has lost £125, or two-thirds of the money invested, and yet the quotation at the times of buying and selling was the same! To repeat the explanation already given, the lower price is that at which he can sell, the higher being that at which he must buy. Having finally resigned himself to his loss on the Wild-Cat speculation, he will be ready to inquire into the reason of the thing, and will probably be satisfied that the double prices are a necessary and proper element in the bargains of the Stock Exchange. One price would not permit the dealer, or "jobber" as he is more properly called, to carry on his business; he must adopt the same principle as other traders, and, as opposed to his customers, buy at a lower price than the one at which he sells.

Even the boot-dealer, for example, has a double price. Should a passer-by see in his shop window a certain pair of boots marked a guinea, the passer-by, if he were to take into the shop an identical pair with a view to selling them to the boot-dealer, would only expect the latter to offer him say

sixteen shillings for the boots, although the boot-dealers admittedly sell them to the public for a guinea. The difference of five shillings would be the boot-dealer's profit. So on the Stock Exchange, the jobbers stand ready to buy or to sell stocks and shares. The broker, as representing his principal the investor, approaches him and asks him to "make a price" for the particular stock or shares the broker is authorised to buy or sell. But the broker does not say whether he intends to buy or to sell; he makes the jobber give a price without knowing his real intention. The jobber accordingly quotes the two prices $155\frac{1}{2}-6\frac{1}{2}$, $42\frac{5}{8}-\frac{7}{8}$, $\frac{1}{8}-\frac{3}{8}$, or 13—15, as the case may be, and the broker closes the bargain if the prices are satisfactory. Generally, any bartering between the broker and the jobber is in the direction of making the quotation less wide, the jobber moving gradually from say 13—15 to $13\frac{7}{8}-14\frac{1}{8}$, not knowing at all whether his prospective customer is a buyer or seller, and consequently dealing as cautiously from the point of view of buying as from the point of view of selling. The quotation $13\frac{7}{8}-14\frac{1}{8}$ is obviously less advantageous and profitable to the jobber but more so to the broker and his principal than the quotation 13—15. The wider the quotation, therefore, the more profitable is the bargain to the jobber, and the more doubtful is it to the investor. The less easily disposable a security may be, the wider is the quotation that is maintained; notice the difference between the quotation for De Beers and that for Wild-Cats. And especially is the factor of a *wide quotation* of supreme importance to small speculators in low-priced securities. Thus if any one should invest £187, 10s. in a purchase of Welsbach's at 13—15, he would, if he were to sell them again on the same quotation, receive £162, 10s., or lose £25 over the transaction. But, as we have already seen, his speculation of the same sum in Wild-Cats has diminished his capital by as much as £125. *See* JOBBER.

DRAFT is a term very generally applied by the public to any bill of exchange, for the reason that it is drawn upon, some person who accepts payment of it. But strictly speaking the term has no such wide signification. A bill of exchange imports that the person drawn upon is a debtor to the drawer; on the other hand the person drawn upon, in a bill which could be correctly called a draft, is only an agent, bailee, trustee, or servant of the drawer, and he accepts the bill only in respect of the money he holds as such on behalf of the drawer. It is therefore usual to denominate as a draft any bill drawn by, *e.g.*, a country banker upon his London agent, or by one department of a commercial house upon another. In law however the bill, whether it is called a draft or not, does import an indebtedness on the part of the drawee to the drawer, and either party is equally liable thereon to a *bonâ fide* holder for value. But as between themselves the distinction may have such an importance as to limit the liability of the drawee to the drawer. *See* BILLS OF EXCHANGE.

DRAINAGE.—A drain is not the same thing as a sewer. By the Public Health Act, 1875, which is the chief statute governing general sanitation, the word "drain" is defined as meaning "any drain of and *used for the drainage of one building only*, or premises within the same curtilage, and made merely for the purpose of communicating therefrom with a cesspool or other like receptacle for drainage, or with a sewer into which the drainage of two or more buildings or premises occupied by different persons is con-

veyed." On the other hand a "sewer" includes drains of every description, except drains to which the word "drain" interpreted as aforesaid applies, and except drains vested in or under the control of any authority other than a sanitary authority having the management of roads. As a general rule the drains are the property of the owner of the premises from which they run, and it is upon him or upon the occupier of the premises that the obligation to cleanse and repair them is laid.

The owner or occupier of any premises has the right to cause his **drains to empty into the local public sewers** on condition that he gives the requisite notice to the sanitary authority, and complies with their regulations in respect of the mode in which the communications between the drains and the sewers are to be made, and submits to the control and superintendence of the authority's officers. To cause a drain to empty into a sewer without compliance with these conditions is to incur a penalty of £20, and the sanitary authority may close any communication so wrongfully made, and recover from the offender the expenses thereof. He may also empty his drains into the sewers of an adjoining sanitary authority, subject to such terms and conditions as may be agreed upon. *Where any house is without a drain* sufficient for effectual drainage, the sanitary authority must by written notice require the owner or occupier, within a reasonable time therein specified, to make a covered drain or drains emptying into any sewer which the authority is entitled to use, and which is not more than a hundred feet from the site of the house. If there are no such means of drainage within that distance, the emptying must be into such covered cesspool or other place, not under any house, as the authority may direct. The authority may require the drains to be of such materials and size, and to be laid at such level and with such fall as on the report of their surveyor appears to them to be necessary. If the order of the authority is not complied with, they may do the work themselves and recover the costs thereof in a summary manner. But if, in the opinion of the authority, greater expense would be incurred in causing the drains of two or more houses to empty into an existing sewer than in constructing a new sewer and causing the drains to empty therein, the authority may construct the new sewer. They may then require the owners or occupiers of the houses concerned to empty their drains therein, and the authority may apportion, as they deem just, the expenses of the construction of the sewer among the owners of the several houses, and recover from the owners in a summary manner the sums apportioned.

Should any house have a drain communicating with any sewer, which drain, though sufficient for the effectual drainage of the house, is *not adapted to the general sewage system* of the district, or is in the opinion of the authority otherwise objectionable, the authority may close the drain; but they are bound to provide a drain effectual for the drainage of the house and communicating with the new sewer. The cost of such operations will be borne by the rates. It is not lawful in any urban district *to newly erect any house or to rebuild any house* which has been pulled down to or below the ground floor, or to occupy any such newly erected or rebuilt house, unless and until covered drains have been constructed to the satisfaction of the official surveyor as necessary for the effectual drainage of the house. Any person who causes any house to be erected or rebuilt, or any drain to be con-

structed in contravention of the foregoing provision, is liable to a penalty of £50. No house can be newly erected or pulled down and rebuilt, as in the last case, without proper **privy accommodation** and an **ashpit** being provided, under a penalty of £20. After proper written notice to the owner or occupier of the house, the authority may enforce the provision of such foregoing accommodation. An earth-closet may be provided in the place of a water-closet. All the foregoing conveniences must be kept in a proper state of repair, and if in bad condition the authority may order alteration or amendment, and any person who fails to comply with the order is liable to a penalty of ten shillings for every day during which the default continues. The authority may do the work themselves and charge the owner with the costs thereof. *See* also NUISANCE; SEWERS.

DRAWBACK.—An allowance which the Government makes on the re-exportation of certain imported goods liable to duties, and which consists of the amount of duty which had been paid upon their importation. The object of this repayment is to enable the exporter to sell his goods in foreign markets unburdened with duties; and it is clear that if duties are required to be paid on the first importation, no international transit trade can possibly be carried on unless a drawback is allowed. Most foreign articles imported into this country may be warehoused for subsequent exportation. In this case they pay no duties on being imported, and of course get no drawback on their subsequent exportation. A drawback is also allowed, upon the same principle, on the exportation of articles produced at home which are subject to excise duties; and here too the system of bonded warehousing makes it possible to operate with merchandise so that no duty need be paid, and accordingly no drawback be required. In theory a drawback is a portion of the "mercantile system," and is intended to promote and encourage exportation; it cannot, however, have any encouraging effect upon a rising industry in a new country, and where it is in operation it simply assists in the maintenance of an already effective export trade.

Drawbacks seemingly correspond and are similar to bounties; but really they are in principle essentially different, for bounties enable the exporter to sell his goods at less than their cost, whilst drawbacks do not interfere with the natural cost. "Drawbacks," said Adam Smith, "do not occasion the exportation of a greater quantity of goods than would have been exported had no duty been imposed. They do not tend to turn towards any particular employment a greater share of the capital of the country than would go to that employment of its own accord, but only to hinder the duty from driving away any part of that share to other employments. They tend not to overturn that balance which naturally establishes itself among all the various employments of the society, but to hinder it from being overturned by the duty. They tend not to destroy, but to preserve, what it is in most cases advantageous to preserve, the natural division and distribution of labour in the society."

Goods on which a drawback is allowed are called *debenture goods*, for the certificate used by the customs authorities which entitles the merchant to payment of a drawback is called a debenture.

DRUNKENNESS.—It is an offence to be found drunk in any public place or on any licensed premises; a publican may get drunk on his own

premises only after closing hours, and when all his customers have departed. The appropriate proceeding against a person found drunk is for the police to summon him; not to arrest him. They may, however, apprehend him and keep him at the police station until he is sober, when he is entitled to be set free. To be guilty of riotous or disorderly behaviour whilst drunk is to be liable to immediate arrest by any person whatever, and to imprisonment with hard labour upon conviction. The offence and penalty is the same in the case of being drunk while *in charge* of any carriage, horse, cattle, or steam-engine, or being drunk when in the possession of any loaded fire-arms. In addition to the above four offences connected with drunkenness, there are others: for example being drunk in a street and guilty of riotous or indecent behaviour; refusing when drunk to quit licensed premises; refusing when drunk to quit a passenger steamer; and being drunk when in charge of a hackney-carriage.

Should any person commit any of the above offences, and have already, within twelve months before such commission, been convicted at least three times of any of those offences, and be also a habitual drunkard, he may be indicted therefor, or by his consent dealt with by the magistrate summarily. On conviction he may be detained for three years in a reformatory or inebriate asylum. A licensed victualler may not permit drunkenness on his premises, nor may he sell any intoxicating liquor to any drunken person. A post-office letter carrier may be indicted for drunkenness endangering the safety or prompt delivery of his letters, and on conviction there may be meted out to him the severe punishment of twelve months' imprisonment. An engine-driver, guard, porter, servant, or other person employed on a railway is liable to a fine of £10, and in default imprisonment with hard labour, if he should be found drunk whilst employed on the railway; and any one aiding or abetting him will be punished in the same manner.

In connection with crime.—A person who commits a crime whilst in a state of voluntarily contracted drunkenness is dealt with in the same manner as if he had not at the time been drunk; his voluntary drunkenness cannot avail him as a defence. But if he was in a state of more or less permanent mental derangement induced by drunkenness, his condition could be pleaded as a defence; so also can a man set up his drunken condition as evidence against the probability of his having any criminal intent, especially in cases where he commits the crime in self-defence or under provocation. With regard to his capacity to *contract*, a drunken man is regarded by the law in practically the same way in which it regards LUNACY (*q.v.*); and *see* INEBRIATE ACTS.

DUNNAGE is the term applied to loose wood, consisting of pieces of timber, boughs of trees, faggots, &c., laid in the bottom and against the sides of a ship's hold. It may answer either of two purposes; it may be used to raise the cargo when the ship is loaded with heavy goods, so as to prevent her from becoming too stiff, and the different parcels from bruising and injuring each other; or it may be employed to keep the cargo, should it be susceptible of being damaged by water, from being injured in the event of her becoming leaky. There is a close analogy between dunnage and *ballast*, the latter being used for trimming the ship and bringing it down to a draught of water proper and safe for sailing.

E

EARNEST is something which is given to signify the conclusion of a contract; sometimes a sum of money, sometimes a ring or other object, to be repaid or redelivered on the completion of the contract. By the Sale of Goods Act it is provided that a contract for the sale of any goods of the value of £10 or upwards may be enforced by action if the buyer has given something in "earnest" to bind the contract, or in part payment. Where therefore there is an earnest, there need be no contract in writing in respect of the sale and purchase of goods. The practice of giving an earnest is a remarkable illustration of the persistence and universality of certain mercantile usages. Though it holds so important a position in modern contract, it is yet a practice of great antiquity. It was found amongst the Phœnicians, the Greeks, and was familiar to the law of Rome; indeed the name itself has a direct etymological relation with the language of the ancients. Strictly speaking an earnest is not identical with a part payment, and accordingly it is not unusual, where there is a written contract, to describe the earnest as paid "as a deposit *and* in part payment of the purchase-money." But whether there is such a written declaration or not, the breach of a contract based upon payment of earnest would forfeit to the vendor the money paid in case of default by the purchaser, and would entitle the purchaser to its recovery and damages in case of default by the vendor. And in all cases the earnest is taken as part payment in the event of the purchase being completed. In view of the fact that the earnest must be *given* to the vendor, it follows that an enforceable bargain will not be struck by merely drawing a coin over the vendor's hand. But it is immaterial how small the amount of the earnest may be. As to part payment, it should be remembered that the first thing to be done is to make the contract, and then when the contract has been so made, something must be given as earnest or part payment. As a result of the necessity of these two steps there could be no part payment merely by a *set-off* which formed no part of the original contract. Thus where A., being indebted to B. in £4, sold to B. goods to the value of £20 on the terms that B. should only pay £16, it was held that there was no payment by B. of the £4, the transaction not being collateral to the contract. *See* SALE OF GOODS.

EASEMENT (AN) is the right which the owner of one property has, arising out of a charter or by prescription, to exercise without payment certain privileges over another property belonging to a different owner. Where the privileges consist of the taking away of tangible objects, such as peat, underwood, fish, &c., the right to these privileges would be called a "profit," not an easement. The term easement would include a right of way, water-course, light, air, &c., but strictly speaking it would be inaccurate to include within the term a right of common. The property which gives to its owner the benefit of an easement over another property is called the "dominant tenement," whilst the property subject to the burden of the easement is called the "servient tenement." An easement is created by a deed of grant, but where none existed the common law formerly always

presumed that the grant had been lost, and allowed a claim to an easement to succeed if it was supported by evidence that the property when sold was part of a larger property in respect of which it then enjoyed the privileges claimed as an easement. Prescription, or evidence of twenty years' uninterrupted and unexplained enjoyment of an easement, was also sufficient to support a claim thereto. But by a statute of William IV. several important alterations were made with regard to easements: forty years' enjoyment of any way or other easement, or any water-course, and twenty years' uninterrupted "access or use of any light to or from any dwelling-house," &c., now constitute an indefeasible title in the occupier, unless he enjoys "by consent or agreement expressly given or made for that purpose by deed or writing." The same statute also enacts that a non-user for the like number of years (according to the description of the particular right) will preclude a litigating party from establishing his claim to it. *See* AIR; ANCIENT LIGHTS; WATER.

EDITION.—An edition of a work may, apart from agreement between the publisher and author, be of any number of copies; and should a publisher choose to print twenty thousand copies, and put forth to the public a limited number at a time, each "issue" of the copies would be deemed in law to be an "edition" in every sense of the word. Where a book is issued at successive periods, there will be a new edition of it at each issue, and it makes no difference whether each edition is a part of the same print or done by movable type or by stereotype. When, therefore, it is desired to have editions limited to certain numbers, there should be an express agreement on the matter.

And so a publisher should have an express agreement with an author restraining the latter from bringing out a new edition of his work, through another publisher, before the original edition is sold. Some years ago a lady having written a work called "How to Dress on £15 a Year as a Lady," interviewed a publisher thereon, when it was verbally agreed that he should publish the work, bearing all expenses directly or indirectly connected therewith, and pay the authoress a certain specified royalty. The publisher accordingly advertised the work at considerable expense, and eventually a considerable sale having been obtained for it, the lady duly received a substantial royalty. But differences having arisen between publisher and authoress, the latter agreed with another publisher that he should publish a revised edition of the book; and this was done, and the book advertised under the same title, while about 2000 copies of the first edition published by the first publisher remained unsold. Under these circumstances the first publisher proceeded against both the authoress and her second publisher, and claimed that they should be restrained from advertising, publishing, or selling any revised or altered, or other edition of the book until the copies in hand had been sold. But it was held that no agreement could be implied on the part of the authoress not to bring out another edition until the first edition was sold, and that a suit against her and the second publisher to restrain such publication could not be sustained. *See* NEWSPAPERS.

EDUCATION.—Much has been written upon both the theory and practice of education; and many attempts have and are constantly being made to improve

the general education of the people. But this general education is hardly an appropriate subject for treatment in such a work as this; it is to special education that attention should be drawn. Not technical education, or education in the practice of a particular trade, but commercial education which has in view an instruction in general business principles and methods. Though for generations there have existed throughout England many schools called "commercial," as distinguished from national, board, grammar, and public schools, it is yet a fact that until recently the teaching therein had no particular commercial characteristics. The name would appear to have been applied to these schools as merely some indication of the class of the community from which their scholars were drawn. The education they provided was certainly not commercial in the modern sense of the word, but was mainly a crude attempt at something more extensive than that afforded by the lower class schools, and at something approaching that in vogue at the grammar and public schools. But recent years have seen a distinct advance on the methods of the old commercial schools and in the public sentiment with regard to commercial education generally. In the council school and in the university may now be found every facility for a logical and thorough education in commercial knowledge. In connection with most council schools there are classes now held in which the poorer youth of to-day may acquire such a knowledge as will fit them to take an intelligent interest in commercial life. The polytechnics and technical schools also provide facilities for commercial education. And even the local university colleges and some of the provincial universities place this branch of education at the very front of their endeavours: in several of the most important universities degrees are now granted in respect of commercial knowledge. Nor must be forgotten the schools and institutes which have lately been established, having as their main object the specialised education of the uprising generation of men and women of business.

It is, however, to the Chambers of Commerce that this movement to advance commercial education is mainly due. In London, Glasgow, and Birmingham the chambers have paid special attention to this branch of education, and have devoted much valuable work to its promotion. To describe their efforts in detail would be too extensive an undertaking for this place, but to confine our attention to the work of one of them will not only give point to this article, but afford a parent or guardian the exact information he requires as to the appropriate education of a youth intended for commercial life. We will therefore take a scheme of education which was prepared some time since by the Commercial Education Committee of the London Chamber of Commerce in concert with the Oxford and Cambridge Schools' Examination Board, and adopted by the Association of Chambers of Commerce of the United Kingdom. A copy of the full syllabus can be obtained free of charge from the offices of the London Chamber of Commerce, 10 Eastcheap, London, E.C. The scheme provides for junior and senior students; and as to the junior students it maps out, on general lines which may easily be adapted to particular cases, a six years' course of study, concluding with an examination for a commercial education certificate. For the senior students is also provided a course of study and an examination thereon for a senior certificate. The Chamber, through its employment department, does its best to obtain appointments for certificate holders without charge.

Junior Course.—This course is designed for youths aged from ten to seventeen years, but the scheme really requires a sound general education before special commercial subjects are introduced, and that the latter should be introduced as a general rule at the stage of knowledge reached by an average boy of about fifteen years of age. *FIRST YEAR*, age 10–12. *English* and *Writing:* Spelling, Dictation, Reading (recognised English Classics, not mere reading-books, to be

presumed that the grant had been lost, and allowed a claim to an easement to succeed if it was supported by evidence that the property when sold was part of a larger property in respect of which it then enjoyed the privileges claimed as an easement. Prescription, or evidence of twenty years' uninterrupted and unexplained enjoyment of an easement, was also sufficient to support a claim thereto. But by a statute of William IV. several important alterations were made with regard to easements: forty years' enjoyment of any way or other easement, or any water-course, and twenty years' uninterrupted "access or use of any light to or from any dwelling-house," &c., now constitute an indefeasible title in the occupier, unless he enjoys "by consent or agreement expressly given or made for that purpose by deed or writing." The same statute also enacts that a non-user for the like number of years (according to the description of the particular right) will preclude a litigating party from establishing his claim to it. *See* AIR; ANCIENT LIGHTS; WATER.

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employed), Recitation, Parts of Speech, Simple Composition, &c., Writing. *History* of England. *French* or *German:* Pronunciation, Acquisition of words and phrases, Dictation, Elementary Grammar, Reading and Translation into English, Recitation. *Geography:* Elementary parts of General Geography and Elements of Geography of the British Isles. *Mathematics:* Arithmetic, including Elements of Vulgar Fractions and Decimals—Mental Arithmetic and Rapid Calculation, Simple Geometry, Employment of Rule, Square, Compasses, &c. *Elementary Science* and *Freehand Drawing. SECOND YEAR,* age 11–13. *Mathematics:* Arithmetic—Long Tots, Cross Tots, Decimal Calculation, Square Root, Proportion, Practice, Simple Interest, Mental Arithmetic and Rapid Calculation, Simple Constructive Geometry. *English* and *Writing:* Using as copies, bills, letters, circulars, &c., both in English and in French or German. *French* or *German* (whichever was commenced in preceding year): Continuation of exercises of preceding year. *German* or *French:* Elementary as in first year. *History* of England. *Geography:* General Geography of Europe, Configuration, Climates, &c.; principal seas, mountains, rivers, &c.; European States—their chief characteristics, physical and political geography, principal towns, population, military forces, &c.; Elementary Economic Geography, with special reference to agriculture, mines, industries, and chief modes of communication. *Elementary Science:* Physics or Natural History, or both. *THIRD YEAR,* age 12–14. *English* and *Writing,* using copies in foreign languages as well as English, as in second year. *French:* Continuation of exercises of preceding year, with Conversational Exercises. *German:* as French. *History* of England, with Literary History and Contemporaneous General History. *Geography:* General Geography, Physical and Economic, of the British Isles and their Possessions, and main routes of traffic. *Mathematics:* Arithmetic—Proportion, Practice, Interest, Discount, Stocks, Mental Arithmetic and Rapid Calculation. Algebra to Simple Equations. Geometry—Euclid, Bk. I. to Prop. 20. *Physics* or *Chemistry. Natural History. Drawing:* Drawing and Shading from Simple Objects, from Cubes, Spheres, from Bas-reliefs of Leaves, Ornamental Flowers, &c., from Architectural Fragments; Elements of Perspective or Geometrical Drawing, Projection of Simple Solid Objects, Elementary Architectural Drawing.

FOURTH YEAR, age 13–15. *English* and *Writing:* Literature, Language, Composition, Writing in English and German characters, Shorthand. *French:* Continuation of exercises of preceding year. Conversational exercises, Dictation, Composition of simple letters, essays, &c.; Reading and Translation. *German* or *Spanish,* or *Portuguese* or *Italian:* The same course to be pursued in commencing a new language as with French and German. *Latin* optional. *History:* Brief course of Ancient History, with special reference to Colonies and Commerce; revision of English History. *Geography:* Commercial Geography of the British Isles, including Agriculture, Annual Produce, Mineral, Textile, and Chemical Industries, Commerce, Railways, Steamboat Service, Colonisation; Physical Geography of Africa, Asia, America, and Oceania. *Mathematics:* Arithmetic—Stocks, Exchanges, Metric System, Mental Arithmetic and Rapid Calculation. Algebra—Factors and Fractions, G.C.M. and L.C.M., Quadratics, Logarithms, Elements of Logarithmic Calculation. Geometry—Euclid, Bk. I. *Natural History. Physics* or *Chemistry. Book-keeping,* &c.: Theory of Accounts, Balancing, Profit and Loss, Book-keeping, International Exchanges, &c., Moneys, &c. *Drawing. FIFTH YEAR,* age 14–16. *English* and *Writing:* Literature, Language, Composition, Writing, Shorthand. *French:* Continuation of exercises of preceding year. Formation and Composition of Words, Literature, Conversation, Correspondence. *German* or *Spanish,* or *Portuguese* or *Italian:* Continuation

An Agreement made the First day of May One thousand nine hundred and ten Between Robert Henry Thomas of 3 The Strand London Job Master (hereinafter called "the owner" which expression shall include his executors administrators and assigns where the context so admits) of the one part and Henry Alfred James of 93 Norfolk Square St James' London Gentleman (hereinafter called "the hirer" which expression shall include his executors administrators and assigns where the context so admits) of the other part Whereby the Owner agrees to let on hire to the Hirer who agrees to take on hire of him at the monthly sum of Twenty Guineas a modern sound and well built landau with suitable furniture thereto And also a sound and strong horse active and free from all vice with good silver plated harness subject in all respects to the approval of the Hirer And also that he the owner will supply an effecient servant to drive and take due care and management of the said landau and horse and will provide suitable livery with plain buttons for the said servant Provided that if the hirer shall desire to have armorial bearings upon the said landau harness or livery he shall pay for the additional expense occasioned thereby And also that he the owner will provide a suitable coach house and stabling for the said landau and horse and also proper and suffecient corn hay straw and other necessaries and grooming for the said horse And also that he the owner will at his own expense keep the said landau and harness in good and substantial repair and condition save only the replacing glass to such of the sashes of the landau as may from time to time be accidentally broken or damaged by the Hirer or by any other person whilst in his use and the reparation of any injury to the cushions or linings occasioned wilfully by or through the negligence of him or any of his family friends visitors or servants And also in case the said landau and harness or any part thereof respectively shall be broken or damaged or the cushions or lining soiled so as to be unfit or unsuitable for the use of or objectionable to the hirer or in case the said horse should die or become sick or unfit for use in any sense or the harness become damaged or unsuitable the Owner will in any of such cases repair or replace

the same with suitable substitutes **And** the hirer hereby agrees to pay to the Owner the said Rent or Hire in manner following that is to say the sum of Forty Guineas being two monthly instalments of the said rent or hire in advance on the signing of this agreement and after the expiration of two Calendar Months from the signing hereof the sum of Twenty Guineas every month **And also** that he the Hirer at his own expense will replace and repair all such loss or damage as may be occasioned to the said landau and harness by or through the wilful acts or negligence of himself and family friends visitors or servants **And also** that he the Hirer will duly take out a proper Inland Revenue License in respect of the said landau **And it is hereby mutually agreed** that either party may determine the Bailment or Hiring hereby created at any time on giving to the other One Calendar months notice in writing for that purpose **And also** that in case any dispute or controversy shall arise between the said parties touching the matter of these presents the same shall be referred to arbitration pursuant to the Arbitration Act 1889

As Witness the hands of the said parties

Witness:
Robert Henderson
Clerk to
Mr. R. H. Thomas

R. H. Thomas

Hy Alfd James

of exercises of preceding year. *Latin* optional. *History:* Commercial History of the Middle Ages and Modern Times, Geographical discoveries. *Geography:* European Commercial Geography, including Agriculture, Industries, Commerce. *Mathematics:* Keep up general exercises, especially in Mental Arithmetic and Rapid Calculation. Algebra—Quadratics, further application of Logarithms. Trigonometry—Definitions, Measurement of Angles, Simple Applications. Geometry—Euclid, Bks. I.–IV., and Mensuration. *Mechanics:* Energy, Mechanical Powers, and Hydrostatics. *Book-keeping*, &c. *Physics* or *Chemistry*. *Natural History*. *Drawing:* Advance on preceding work, Geometrical Drawing, Perspective, Architectural Drawing, Machinery, &c. History of Art.

SIXTH YEAR, age 15–17. *English* and *Writing:* Literature, Language, Composition, Writing, Shorthand. *French:* Syntax, Idioms, Literature, Composition of Commercial Letters, &c.; language to be spoken. *German* or *Spanish*, or *Portuguese* or *Italian:* Continuation of exercises. *Latin* optional. *History:* Contemporaneous Commercial History. *Geography:* Commercial Geography of Africa, Asia, Oceania, America. Animal and Vegetable Produce, Mines, Metals, Precious Stones, Industries, Markets, Ports, Means of Transit. *Commerce* and *Commercial Law:* Commerce, Commercial Contracts, Insolvency and Bankruptcy, Commercial Law, Industrial Law, Chambers of Commerce, Patents, &c. &c. *Mathematics:* Algebra—Binomial Theorem and higher work. Geometry—Euclid, Books I.–IV. and XI. (optional), and Mensuration. Mechanics—Kinematics, Kinetics, Dynamics. Cosmography of the Earth, Sun, Moon, Planets, Comets, &c. *Book-keeping*, &c. *Physics* or *Chemistry*. *Political Economy:* Its aim, Production of Riches, Distribution of Riches, Exchanges, Money, Credit, Saving, Luxury, Application to Financial Legislation. *Drawing*.

JUNIOR EXAMINATION.—Students should be examined at the end of each year in all the subjects previously learned, but with special reference to the subjects studied during the year. At the end of the sixth year, or when seventeen years of age, they should pass the examination for the *Junior Commercial Education Certificate*, the standard of knowledge expected being that of the final year. This examination is held at the principal commercial centres as well as in London. There are five *obligatory* subjects, in each of which the student must pass; and he must also pass in at least one group, but not more than two of the *optional* groups of subjects. The following are the obligatory subjects:—(a) *English Essay*, including Handwriting, Dictation, Orthography, Composition, and Analysis; (b) *Arithmetic*, including thorough familiarity with Arithmetic, Theory and Practice, and particularly a knowledge of the Metric System and Mental Arithmetic; (c) *A Modern Foreign Language*, comprising Conversation, Translation, Dictation, and Composition; (d) *Elementary Drawing*—Freehand *or* Geometrical *or* Designing; (e) *Elementary Chemistry* or *Physics*—Theoretical: (i) Elementary Inorganic Chemistry, or *either;* (ii) Sound, Light, and Heat, together with Weighing and Measuring; *or* (iii) Electricity and Magnetism. Practical: Either (i) (ii) *or* (iii) as above, but only one to be taken.

There are four groups of optional subjects:—A, Mercantile; B, Linguistic; C, Mathematical; D, Scientific. Group A consists of: (1) *Commercial Arithmetic* and *Book-keeping*. A general knowledge of Foreign Weights and Measures, Currencies, and Exchanges is required, with approximations. (2) *History*, including Commercial History of the British Isles, Colonies, and Dependencies. Political Economy: Its aim, Production of Riches, Exchanges, Money, Credit, Saving, Luxury, Application to Financial Legislation. (3) *Commercial Geography*, including Physical, Political, Commercial, and Industrial Geography of the British Isles, Colonies, and Dependencies. (4) *Drawing*.—Advanced Freehand and Model

or Advanced Designing, *or* Advanced Mechanical, *or* Advanced Geometrical, *or* Perspective. (5) *Shorthand.*—Writing in Shorthand (any system) from passages dictated at the rate of seventy and eighty words per minute. Transcription of the Shorthand. (6) *Typewriting.*—Copying in correct form, commercial letters and tabular statements from manuscript copy. At least two, but not more than four of the foregoing subjects are to be taken. In Group B at least two, but not more than four of the following languages: French, German, Spanish, Portuguese, Russian, and Italian. Latin may be taken, but it does not count as one of the necessary languages. In Group C at least two, but not more than four of the following six: Algebra, Euclid, Trigonometry, Statics, Dynamics, Hydrostatics. In Group D at least two, but not more than four of the following six: Chemistry; Sound, Light, and Heat; Electricity and Magnetism; Botany; Geology; Mechanics.

Senior Course.—This course is primarily intended for youths over fifteen years of age who can devote all their time up to the ages of eighteen or nineteen to study, and for those who can only attend at Technical Colleges or Evening Classes, or to whom it is convenient to complete the prescribed course in such classes or colleges. Excepting in regard to experimental and practical science, there is no reason why the course should not be pursued by any person with a fair general education, by private study and without the advantage of classes. We therefore set out more fully the subjects which are most adapted for the private student, for without regard to examination thereon, there is no doubt that they afford a useful suggestion as to the most valuable course of reading in commercial subjects that can be pursued. There are seven obligatory subjects for the examination, and a number of optional subjects, out of which the candidate may select any two. Having passed in these nine subjects, the student is entitled to a "Higher Commercial Certificate," and may then feel assured that he can enter upon a business career well equipped with something more than a mere theoretical education.

The *obligatory* subjects are: English; two Foreign (including Oriental) Languages; Mathematics; Geography, with special reference to commerce; Commercial history; and the Elements of Political Economy. The *optional* subjects, from which any two may be selected, are: Mathematics, Latin, Machinery of Business, Banking and Currency, Commercial and Industrial Law, Book-keeping, Chemistry, Physics, Geology, Mineralogy and Petrology, Metallurgy, Botany, Zoology, Microscopic Manipulation, Drawing, Photography, Shorthand, Typewriting. The extent of the knowledge in these subjects required of the student can be gathered from the syllabus of the examination, which may be obtained free of charge from the London Chamber of Commerce. We will here notice only a few.

Geography, Physical and Commercial: Materials of which the earth's crust is chiefly formed—Causes of the configuration of the surface—The principal ranges of mountains—Climate—The distribution of rainfall—The relation of rainfall to the temperature and presence of the atmosphere—Irrigation—Outline of the law relating to wind currents—Nature of storms—Influences of climate upon the vegetation and animal life of different countries—The relation of the climate and the configuration of a country to the habits and work of its inhabitants—The principal centres of the commerce of the world—The chief railway and shipping routes connecting these centres—The distribution of coal—The relation of the occurrence of coal to the various industries in a country—The principal centres of production of metals, such as iron, gold, silver, nickel, tin, copper, lead, &c.—The chief mining districts—Distribution of population and relative density of population—The position of cities, and the conditions favourable or unfavourable

to the growth of great commercial centres—The most important agricultural areas—The sources of supply to Britain of corn, rice, fruit, &c.—The chief sources of tea, coffee, cocoa, sugar, and tobacco—The wine districts—The relation of production in the British Isles to the import of goods and clothing—The principal districts in the world for the production of silk, wool, cotton, flax, and jute—The sources of the most important materials used in building—The sources of the raw materials for the alkali and acid trades, and for the production of some of the more common medicinal substances of vegetable and mineral origin.

Commercial History: 1. Mediæval Commerce—The Trade Routes—The Hansa and Baltic Trade—The Staple System—The Rise of the Merchant Adventurers Company—The Commencement of Trade with the East—The Dutch Companies. 2. The Modern Epochs, Seventeenth Century—The Mercantilists—The Balance of Trade—Chartered Companies—Regulated and Joint-Stock Companies—Early Free Trade Measures—Commercial Treaties, Eighteenth Century—Physiocrats—Adam Smith—Free Trade. 3. The state of European Commerce after the great war with France (1793-1815); and the position of Great Britain. 4. The growth and influence of Free Trade; its theoretic basis—Commercial relations between Great Britain and Foreign Countries from 1815 to the present time—Continental movements—German Zollverein: Commercial treaties, Recent tariff charges—Present position of the Free Trade question in France, Germany, United States, and England—Foreign Trade since 1873—Present position of England.

Elements of Political Economy: 1. The methods of Economic Study. 2. The sphere of Economic Study: Population and its industrial divisions—Relations of different trades. 3. The State in relation to labour and trade. 4. Assumptions of Economic Science—The market—Definition of value, wealth, capital. 5. Production—Division of Labour—Junction of Capital—Increasing and diminishing return—Normal and market values. 6. Distribution: wages, profits, rents—Relations of Employees and Employed.

Machinery of Business: 1. Machinery of Exchange:—Negotiable instruments—Bills of Exchange and cheques—Indian and Foreign Bills—Acceptance for honour, negotiation, maturity, protest, re-exchange, stamps required—Inland and Foreign Exchanges—Arbitration of Exchange—Rate of Exchange. 2. Insurance and the Machinery of Lloyds:—Affreightment—The Charter-Party—Bills of Lading—Demurrage—General and particular Average—Salvage—Bottomry Bonds and Respondentia. 3. Stock Exchange and its Machinery:—Constitution and Rules—Brokers and Jobbers—Omnium—The Contract—Contango and backwardation—Selling, options, script—Bull and bear—Bonus, coupons, dividend—The Public Funds. *Banking and Currency:* 1. Money and its functions—Various systems of legal tender—The monetary standard. 2. The Structure of the English Banking System—Note Issues: The reserve and discount rate—The Bank Acts—The Clearing House. 3. The relation between metallic money, credit, and prices. 4. History of English currency, the adoption of the English Gold Standard, 1816. 5. History of Banking in England—The restriction of cash payments and the resumption. 6. The Gold discoveries, 1848-1850; their effect—The modern monetary question and the double standard.

EJECTMENT is the old name by which is still generally known the action now technically described as "for recovery of land." By this action should proceed a claiment to property in the possession of another, whether the claim is one involving a dispute as to title, or one by a landlord against his tenant. A tenant must give notice to his landlord at once of any writ of ejectment with which he may be served; by failure to do so, he incurs a

penalty of three years' rent. In this article we propose to deal very briefly with proceedings by landlord against tenant in *the High Court;* leaving for treatment in the article on RECOVERY OF SMALL TENEMENTS the subject of proceedings in the County Court or before a magistrate. In the first place, it should be noticed that a landlord can proceed for the ejectment of his tenant without fear of the latter raising a defence which will entail proof by the landlord of his title to the property. The tenant is precluded from setting up such a defence, for the reason that the law presumes that upon becoming tenant he thereby recognised the landlord's title, and so estopped [*see* ESTOPPEL] himself from impugning it. Should the tenant seriously intend to dispute his landlord's title, he must give up possession of the property before the law will permit him to do so.

In an action for the recovery of land, whether with or without a claim for rent or mesne profits, by a landlord against a tenant whose term has expired or has been duly determined by notice to quit, or against persons claiming under that tenant, the landlord may proceed by a writ specially indorsed with his statement of claim. This proceeding only applies where the plaintiff's title is not contested, as in cases where the plaintiff has himself demised the property, and has been party to the lease or agreement under which it has been held, or where there has been a payment of rent by the defendant to the plaintiff, or where the defendant is otherwise estopped from denying the plaintiff's title. It applies therefore to such practically undefended cases where the tenant holds over after the expiration of his lease, or after expiration of a notice to quit; but it will not apply where the claim for possession is based in substance on some forfeiture incurred by the tenant. The following is a form of statement of claim available for special indorsement:—

The plaintiff's claim is to recover possession of a farm and premises called Church Farm, in the parish of St. James, in the county of Surrey, which was let by the plaintiff to the defendant [for the term of three years from the 29th September 1907, which term has expired, *or* as tenant from year to year from the 29th September 1907, which said tenancy was duly determined by notice to quit expiring on the 29th September 1910].

The plaintiff claims possession and £50 for mesne profits [*here insert any claim for arrears of rent*].

(Signed) —— ——, *Plaintiff.*

In case of vacant possession, this writ may be served, when service cannot otherwise be effected, by posting a copy of the writ upon the door of the dwelling-house or other conspicuous part of the property. It is not only the defendant actually sued, however, who has a right to appear and defend the action, for any person not named as a defendant may by leave of the court appear and defend, on filing an affidavit showing that he is in possession of the land either by himself or by his tenant, and he may limit his defence as to part only of the property. But if no appearance is entered, or if an appearance is entered but the defence is limited to part only, the plaintiff may enter judgment that the person whose title is asserted on the writ shall recover possession of the land, or of the part thereof to which the defence does not apply. Where the plaintiff has indorsed a claim for mesne

profits, arrears of rent, double value, or damages for breach of contract, or wrong or injury to the premises, he may enter judgment as before mentioned for the recovery of the land, and then proceed in respect of his other claim. And in like manner judgment may be entered in default of pleading. If the writ had been specially indorsed, the plaintiff would be entitled to apply for SUMMARY JUDGMENT notwithstanding any appearance.

The judgmant or order that the plaintiff is to recover possession may be enforced by a writ of possession, which should describe the premises as they are described in the judgment or order. The plaintiff or his agent should attend upon the property with the sheriff, who may enter with force if necessary, and must deliver complete possession thereof to the plaintiff.

For non-payment of rent *where there is not a sufficient distress upon the premises.*—By the Common Law Procedure Acts, 1852–60, it is enacted that in all cases between landlord and tenant, as often as it happens that *one-half year's rent* is in arrear, and the landlord or lessor to whom it is due has a right by law to re-enter for the non-payment thereof, he may, without any formal demand or entry, serve a writ in ejectment for the recovery of the demised premises. If the writ cannot be legally served, or no tenant is in actual possession, a copy may be fixed upon the door; or if there is no house, upon some other notorious place. Should the defendant not appear, and the court be satisfied that half-a-year's rent was due before the writ was served, and that no sufficient distress was to be found on the demised premises, countervailing the arrears then due, and that the lessor had power to re-enter, a judgment and execution thereof for recovery of possession will be granted by the court. The tenant or his mortgagee, however, is entitled to apply to the court for relief from the forfeiture, if he does so within six months from the judgment and execution and pays up the rent and arrears, with full costs. *Staying proceedings.*—If the tenant or his assignee, having appeared to the writ, at any time before trial pays or tenders to the landlord or lessor all the rent and arrears, together with the costs, further proceedings in the ejectment will be stayed. *See* also DESERTED PREMISES; LANDLORD AND TENANT.

ELECTRIC LIGHTING is regulated in Great Britain and Ireland by the Electric Lighting Acts, 1882 to 1899, an additional Act of 1890 being only applicable to Scotland. Before any local authority, company, or person, hereinafter called "undertakers," can supply electricity for any public or private purposes within any area, **a licence** from the Board of Trade must be first obtained. The following are the provisions relating to this licence: (1) Every local authority of the area, or any part thereof within which the supply is to be furnished, is required to consent to the application for the licence; (2) The licence is for a period of not more than seven years, but at the expiration of the term it may be renewed by the Board of Trade; (3) "Public purposes" mean lighting any street or any place belonging to or under the control of a public authority, or any church or registered place of public worship, or any hall or building belonging to or subject to the control of a public authority, or any public theatre, but it does not include any other purpose to which electricity may be applied; (4) "Private purposes" include any purposes whatever to which electricity may for the time being be applicable, not being public purposes, except the transmission of any

telegram; (5) Notice of the application for a licence must be published and advertised, including all particulars required by the Board of Trade, and giving an opportunity to parties interested to make representations or objections to the Board of Trade with reference to the application; (6) A local authority can only make an application for a licence in pursuance of a special resolution; (7) A local authority may be licensed to supply electricity within any area, although the same or some part thereof is not within their own district; (8) The licence may contain regulations as to the limits within which and the conditions under which the supply of electricity is to be compulsory or permissive, as the Board of Trade may approve; (9) Where the undertakers are not the local authority, the licence may contain provisions and restrictions for enabling the latter to break up the streets and alter pipes and wires at the expense of the undertakers. The Board of Trade may also, from time to time, by provisional order, authorise a local authority, company, or person, to supply electricity for the above purposes without requiring the usual consents. The Acts do not authorise or empower the undertakers of electrical works to break up any street which is not repairable by the local authority, or any railway or tramway, without the consent of those by whom it is repairable, unless the licence confers special powers in that behalf. Nor are the undertakers authorised to place any electric line above-ground, along, over, or across any street, without the express consent of the local authority; and if such is done without that consent the authority may remove the same and recover the expense thereof in a summary manner. Subject to the provisions of the Acts, and of the licence, order, or special Act authorising them to supply electricity, and to any bye-laws made under the Acts, the undertakers may alter the position of any pipes or wires being under any street or place authorised to be broken up by them which may interfere with the exercise of their powers. But they must previously make *compensation* to the owners of the wires and pipes. If the undertakers and owners cannot agree between themselves as to the mode of making such alterations as may before the commencement thereof have been agreed upon, the differences are to be determined in the manner prescribed by the undertakers' authority, or by arbitration, if no such manner is prescribed. In the exercise of their powers the undertakers must cause as little detriment and inconvenience, and do as little damage as possible; and they must make full compensation to all bodies and persons interested for all damage sustained by them in consequence of the exercise of these powers. The amount and application of the compensation in case of difference is to be determined by arbitration. Arbitration, unless otherwise directed by the licence, order, or Act, must be conducted before an engineer or other fit person to be nominated by the Board of Trade on the application of either party; the expenses of the arbitration are to be borne as the arbitrator directs. The undertakers are not allowed to prescribe any special form of lamp or burner to be used by the consumer, or in any way to control or interfere with the manner in which the electricity supplied by them is used. Where electricity is provided in any part of an area for private purposes, every consumer within that part of the area is entitled, on application, to a supply on the same terms on which any other consumer in the same part of the area is entitled under similar circumstances to a corresponding supply The undertakers must not

show any undue preference to any local authority or consumer, but must charge for the supply of electricity within the limits of price imposed by the licence, order, or Act authorising them to supply electricity. Should a consumer of electricity fail to pay for his supply, the undertakers may cut off the supply, and for that purpose may cut or disconnect any electric line or other work through which electricity may be supplied; and they may discontinue the supply until payment is made of the debt and of the expenses, but no longer. It is a felony to unlawfully and maliciously cut or injure any electric line or work with intent to cut off any supply of electricity, and the punishment may be five years penal servitude. The malicious or fraudulent abstraction, waste, diversion, consumption, or use of any electricity is punishable as simple larceny.

Any officer appointed by the undertakers may at all reasonable times enter any premises to which electricity is or has been supplied by the undertakers, in order to inspect the electric lines and other apparatus for the supply of electricity belonging to the undertakers. Such entry may also be made for the purpose of ascertaining the quantity of electricity consumed or supplied; or where a supply of electricity is no longer required, or where the undertakers are authorised to take away and cut off the supply from any premises, for the purpose of removing any electric lines or other apparatus belonging to the undertakers. But all damage caused by such entry, inspection, or removal, must be repaired by the undertakers. In addition to being privileged from distress for rent, any such lines or apparatus on premises not in the possession of the undertakers for the purpose of supplying electricity, are privileged from being taken in execution under any process of law, or any proceedings in bankruptcy against the person in whose possession they may be.

Purchase of undertaking by local authority.—Where any undertakers are authorised to supply electricity within any area, any local authority, within whose district that area or any part thereof is situated, may by notice in writing require the undertakers to sell the undertaking. But the notice must be given within six months after the expiration of a period of forty-two years, or such shorter period as is specified in that behalf in the undertakers' provisional order or special Act, from the date of the passing of the Act confirming the provisional order, or of the special Act, and within six months after the expiration of every subsequent period of ten years or such shorter period as may be specified as aforesaid. Upon receipt of the notice the undertakers must sell their undertaking to the local authority, or so much of the undertaking as is within the jurisdiction of the latter. The terms of the sale are to be the payment of the then value of all lands, buildings, works, materials, and plant of the undertakers suitable to and used by them for the purposes of their undertaking within that jurisdiction; in case of difference the value is to be determined by arbitration. But the value of the foregoing property must be its fair market value at the time of the purchase, due regard being had to the nature and then condition of the property, and to the state of its repair, and to the circumstance that it is in such a position as to be ready for immediate working, and to the suitability thereof to the purposes of the undertaking. Where only a part of the undertaking is purchased, regard must also be had to any loss occasioned by the

severance. No addition can be made to the value in respect of the compulsory purchase, or of the goodwill, or of any profits which may or might have been or be made from the undertaking, or of any similar considerations. If any other questions arise in relation to the purchase they may be determined by the Board of Trade.

Special provisions.—*New connections.*—When the undertakers, not being the local authority themselves, are about to lay in any street any electric line which is intended for supplying energy to a particular consumer, and not for the purposes of general supply, they must serve notice of their intention upon the owners and occupiers of all the premises abutting on that street; and if two or more of those owners or occupiers give the requisite notice to that effect, the undertakers are bound to provide a supply for them as well as for the particular consumer. The owner or occupier of any premises situate within fifty yards from a distributing main of the undertakers is entitled to force the latter to furnish him with a supply of energy of the maximum power to which such premises as his are entitled. But he must give proper notice of his requirements to the undertakers; and the latter may require him to enter into an agreement, with or without security, to continue to receive and pay for the supply, for a period of at least two years, such an amount that the payment to be made for the supply, at the current rates generally charged to ordinary consumers, is not less than 20 per cent. per annum on the additional outlay, in respect of electric lines, which the required supply forces upon the undertakers.

Meters.—The undertakers are bound to supply a meter to a consumer, provided the latter pays them a reasonable sum in respect of the price of the meter, or gives security therefor, or (if he desires to hire the meter from the undertakers) enters into an agreement for payment of the hire. Unless the agreement for hire otherwise provides, the undertakers must keep in repair every meter which they let on hire, and the consumer is not bound to pay rent therefor during the time that the meter is out of repair and does not correctly register the value of the supply. But meters which belong to the consumer must be kept in repair at his own expense. If there is any dispute as to the correctness of a meter, it must be determined by an electric inspector appointed by the local authority; but if the latter are the owners of the undertaking the inspector will be one appointed by the Board of Trade. Subject to this provision for a settlement of disputes by the electric inspector, the register of the meter is conclusive evidence of the amount of the supply, provided, of course, that there is no fraud.

Accidents.—The undertakers are answerable for all accidents, damages, and injuries happening through their act or default, or through that of any person in their employment, by reason of or in consequence of any of their works. They are also required to indemnify all authorities, bodies, and persons by whom any street is repairable, and all other authorities, companies, and bodies, collectively and individually, and their officers and servants, from all damages and costs in respect of those accidents, damages, and injuries. *Nuisances.*—Nor are they exonerated from any indictment, action, or other proceedings for nuisance in the event of any nuisance being caused or permitted by them. *Entry on private land.*—Nor have they any power to lay down or place any electric line or other works into, through, or against any

building, or in any land not dedicated to the public use, without the consent of the owners and occupiers thereof, except to enter and replace a line or works already there laid. For fraudulently using the electricity, destroying meters, &c., damaging lines and not paying the charges, the penalties and remedies are the same as in the case of GAS.

ELECTRICITY.—A man who creates on his land an electric current for his own purposes, and discharges it into the earth beyond his control, is as responsible for any damage caused by that current as he would have been if, for example, he had instead discharged a current of water. But where the act is done under statutory authority, or in pursuance of a provisional order of the Board of Trade, it is protected to the same extent as other nuisances under like authority. Thus where a tramway company, acting under a provisional order and using the best-known system of electrical traction, caused electrical disturbance in the wires of a telephone company acting under license from the Postmaster-General, it was held that the tramway company were protected from liability for the nuisance. But there is nothing in the Electric Lighting Act, 1882 (see preceding article), to relieve undertakers thereunder from liability to an action at common law for nuisance to their neighbours caused by their works. An electric lighting company erected powerful engine and other works on land near to a house which was subject to a lease. Owing to excavations for the foundations of the engines, and to vibration and noise from the working of them, structural injury was caused to the house and annoyance and discomfort to the lessee. Both the lessee and his landlord brought actions in respect thereof, and the court awarded damages and granted an injunction. And *see* NUISANCE.

EMBARGO is a term, in international law, signifying an act of force, such as a reprisal or pacific blockade, hovering between peace and war, and having as its object the obtaining of redress without resort to actual war. It may be either a hostile or a civil embargo. The former consists in the provisional arrest of the probable enemy's ships found in the harbours or interior waters of the active country, in order to prevent their departure; the latter is a similar arrest of ships found in local waters, and effected in order to prevent the spread of intelligence, or to minimise the risk of improper restrictions being placed on the home trade by foreign nations. *See* BLOCKADE; REPRISALS.

EMBEZZLEMENT is the fraudulent misappropriation by a clerk, or servant, of money or goods received by him for and on account of his master, and not in the master's possession. It differs from larceny in that it is an offence created by statute, and can only be committed by a clerk or servant, and the property appropriated must belong to the master. Larceny on the other hand is an offence at common law, and may be committed by any person whether a servant or not, but the property stolen must be taken by the thief out of the possession of its owner or lawful possessor for the time being. There are a great number of statutes relating to embezzlement, and enacted with a view to supplying the deficiencies of the common law. These relate in particular to embezzlement by officers and members of banks—an officer or servant of the Bank of England convicted of embezzling securities, money, or other effects belonging to or deposited with the bank, is liable to penal servitude for life; by rate collectors; by persons in the King's service,

or by the police; and of letters by officers of the post-office. And somewhat akin to these enactments are those relating to fraudulent misappropriation by bankers, solicitors, trustees, agents, and others in like position. But if upon the trial of any person indicted for embezzlement it is only proved that he took the property in question in such a manner as to amount to a larceny, he is not entitled to be acquitted, as the jury have power to find him guilty of larceny.

Embezzlement by clerks or servants generally.—Whosoever, being a clerk or servant, or being employed for the purpose or in the capacity of a clerk or servant, shall fraudulently embezzle any chattel, money, or valuable security which shall be *delivered to or received or taken into possession by him for or in the name or on the account of his master* or employer, or any part thereof, shall be deemed to have feloniously stolen the same from his master or employer, *although such chattel, money, or security was not received into the possession of such master* or employer, otherwise than by the actual possession of his clerk, servant, or other person so employed: and being convicted thereof shall be liable, at the discretion of the court, to be kept in penal servitude for any term not exceeding fourteen years . . . or to be imprisoned . . . and if a male under the age of sixteen years, with or without whipping.

To obtain a conviction it is necessary to prove that defendant was *a clerk or servant* to his master at the time he received the chattel, money, or valuable security he is alleged to have embezzled. But the clerk or servant of an illegal society cannot be convicted of embezzlement. It will be sufficient if the defendant was only temporarily employed at that time in the capacity of a clerk or servant, and was then acting under and bound to obey the orders of his master; but whether the defendant was in fact a clerk or servant is always a question for the jury to determine upon the evidence before them. A female servant, an apprentice under age, and a son who lived with his father and acted usually as his father's clerk, although without salary or any binding agreement between them, have in each case been held to be a "clerk or servant." A partner, or one of two or more beneficial owners, has been made, by statute, liable to conviction for an embezzlement of the partnership or joint property; so also has a secretary or treasurer of a friendly society of which he is a member, in respect of the society's funds. But a mere unpaid treasurer of a friendly society, not appointed by the trustees of the society, would not be a clerk or servant of the trustees in whom the monies of the society are vested, and could not be indicted for embezzling the society's monies—he would be merely an accountable officer, not a servant. It is not necessary that the employer should be a person in trade, for the clerk or servant of a professional man is equally capable of embezzlement with the clerk or servant of a trader or merchant. But there is a great difference between a clerk or servant and a mere bailee or commission agent. The latter are not generally capable of embezzling the money or goods of their employer, and consequently it is often an important question whether a particular person is a bailee or commission agent and not a clerk or servant.

In considering to which class a man may belong, it is not so material to know the mode in which he is remunerated for his services, as to know

whether he is in fact the dependent servant of his employer. If he is at liberty to go where and do what he pleases, to work or abstain from working at his own pleasure without submission to any commands in those respects from his employer, it may be taken as a general rule that he is not a clerk or servant; in such a case the fact that he receives a salary will not make him one. A few cases will illustrate this. Where a man named A. was employed to solicit orders for B. & Co., and was to be paid by a commission on the sums received through his means, and was at liberty to apply for orders whenever he thought most convenient, but was not to employ himself for any other persons than B. & Co., it was held that on these facts alone it was not shown that A. was a clerk or servant. Was he under the control of and bound to obey his alleged master? There was nothing to show in the foregoing case that A. could not leave his work for his own pleasure whenever he thought fit, although he could not indeed work for any other employer than B. & Co. On this principle it was decided in another case that there was evidence that the prisoner was a clerk or servant where he was employed by the prosecutor to solicit orders and collect monies, for which he was paid by commission, being at liberty to get orders when and where he pleased, but to be exclusively in the employ of the prosecutor, *and* to give the whole of his time to the prosecutor's service.

Property capable of embezzlement.—It is also necessary to prove that the defendant had received the chattel, money, or valuable security *for or in the name of, or on account of, his matser*. This is the essential characteristic of an embezzlement—that the property embezzled was never, even constructively, in the possession of the master; for if it was, the offence, as we have before pointed out, would amount to larceny at common law. Where the duty of A. was to sell his master's goods, entering the sales in a book and settling accounts with his master every week, but instead of so doing A. fraudulently omitted to make an entry of a certain sale in the book, and appropriated the money which he received from the buyer, he was held to have committed an embezzlement of the money so appropriated. On the other hand a certain defendant was employed as a town traveller and collector, to receive orders from customers and enter them in the books and receive the money for the goods supplied thereon, but he had no authority to take or direct the delivery of the goods from his master's shop. A customer having ordered two articles from the defendant, the latter entered only one of them in his order book, for which an invoice was made out by his employer to the customer; but the defendant entered the price of the other at the bottom of the invoice, and having caused both to be delivered to the customer, received the price of both, and accounted to his master only for the former: this was held not to be embezzlement but larceny. It is not necessary that the person paying the money or handing the property to the servant should have actually paid or handed it to him on account of his master; it is sufficient if the servant actually received it on his master's account. But there would be no embezzlement if the servant had appropriated property received by him from his master himself for the purpose of paying or handing it to a third person. Nor is it an embezzlement for a servant to appropriate money which he has himself earned, by an unauthorised and wrongful use of his master's implements of trade, from a person who contracted with the servant only and knew nothing

of the master in the transaction. Where there is *a general deficiency of monies*, it is incumbent upon the prosecutor to prove an embezzlement of at least some specific sum; a general deficiency in account is not sufficient. In order to anticipate a defence of accidental error, he may also prove a series of similar "errors" both before and after that which forms the subject of the charge. *See* LARCENY.

EMPLOYERS AND WORKMEN—Disputes between.—Special provision is made for the settlement of disputes between employers and workmen by the Employers and Workmen Act of 1875, the operation of which extends to Scotland. The Act does not apply to seamen or to apprentices to the sea service. The word "workman" does not include a domestic or menial servant, but means "any person who, being a labourer, servant in husbandry, journeyman, artificer, handicraftsman, miner, or otherwise engaged in manual labour, whether under the age of twenty-one years or above that age, has entered into or works under a contract with an employer, whether the contract be . . . express or implied, oral or in writing, and be a contract of service or a contract personally to execute any work or labour." The Act does not take away or abridge any local or special jurisdiction touching apprentices, and so far as it does relate to apprentices, it applies only to an apprentice to the business of a workman, as above defined, upon whose binding no premium is paid, or the premium (if any) paid does not exceed £25, and to an apprentice bound under the Poor Laws.

In County Courts.—In a county court proceeding relating to a dispute (absence by a workman from his master's service without notice has been held to be a "dispute") between an employer and a workman arising out of or incidental to their relation as such, the court may, in addition to its other powers, exercise the following:—(1) It may adjust and set off the one against the other all such claims on the part either of the employer or of the workman arising out of or incidental to the relation between them, as the court may find to be subsisting (no matter by which party the right to a claim is brought to the notice of the court, *Keates* v. *Lewis Merthyr Cons. Collieries*), whether the claims are liquidated or unliquidated, and are for wages, damages, or otherwise; (2) It may have regard to all the circumstances of the case and rescind any contract between the employer and the workman upon such terms as to the apportionment of wages or other sums due thereunder, and as to the payment of wages or damages, or other sums due, as it thinks just; (3) Where the court might otherwise award damages for any breach of contract it may, if the defendant is willing to give security for the performance by him of so much of his contract as remains unperformed, with the consent of the plaintiff, accept the security, and order performance of the contract accordingly, in place either of the whole of the damages which would otherwise have been awarded, or some part of the damages. The security is required to be an undertaking by the defendant and one or more surety or sureties that the defendant will perform his contract, subject on non-performance to the payment of a sum to be specified in the undertaking. Any sum paid by a surety on behalf of a defendant in respect of such a security, together with all costs incurred by the surety, will be a debt due to him from the defendant.

In Courts of Summary Jurisdiction.—Such a dispute may also be tried by the magistrates, who will then have the same powers therein as a county court. But magistrates—(1) cannot exercise this jurisdiction where the

amount claimed exceeds £10; and (2) cannot make an order for the payment of any sum exceeding £10 exclusive of costs; and (3) cannot require security to an amount exceeding £10 from any defendant or his surety or sureties.

Apprentices.—In determining any dispute under this Act between a master and an apprentice, the magistrates have the same powers as if the dispute were between an employer and a workman, and the instrument of apprenticeship a contract between an employer and a workman. They have also the following powers:—(1) To make an order directing the apprentice to perform his duties under the apprenticeship; and (2) to rescind the instrument of apprenticeship and order the whole or any part of the premium to be repaid. When the apprentice has been ordered to perform his duties under the apprenticeship, and has failed to do so within one month from the date of the order, he may be imprisoned for fourteen days. If there is any person liable under the instrument of apprenticeship for the good conduct of the apprentice, that person may, by direction of the court, be summoned in like manner as if he were the defendant in the proceedings. In addition to, or in substitution for, any order against the apprentice, the surety may be required to pay damages for any breach of the contract of apprenticeship to an amount not exceeding the limit (if any) to which he is liable under the instrument of apprenticeship. The court may accept a security instead of or in mitigation of any punishment it is authorised to inflict upon the apprentice.

Master neglecting his servant or apprentice.—By section 6 of the Conspiracy and Protection of Property Act, 1875, it is enacted that "where a master, being legally liable to provide for his servant or apprentice necessary food, clothing, medical aid, or lodging, wilfully and without lawful excuse refuses or neglects to provide the same, whereby the health of the servant or apprentice is or is likely to be seriously or permanently injured, he shall on summary conviction be liable either to pay a penalty not exceeding £20, or to be imprisoned for a term not exceeding six months, with or without hard labour."

Conspiracy and injury to property.—The last-mentioned statute, which refers also to Scotland and Ireland, introduced an amendment to the law as to conspiracy in trade disputes. It may be safely stated that at common law all combinations of workmen to affect the rate of wages were before then illegal. There was a limited exception to the rule introduced by an Act of George IV., but the ordinary operations of a strike which would not fall definitely within those narrow exceptions were still illegal conspiracies. So late as 1872 it was held in the gas stokers' case that a strike might, under certain circumstances, amount to a conspiracy at common law to molest, injure, or impoverish an individual, or to prevent him from carrying on his business, and this case led to the passing of the Act now under consideration and to the amendment of the law thereby introduced. And more recently the Trades Disputes Act, 1906, has been passed, further regulating strikes and trades disputes, and which is specially dealt with in the articles on STRIKES and TRADE UNIONS. *The amendment of the law.*—By section 3 of the Act of 1872, as amended by the Act of 1906, it is provided that "an agreement or combination by two or more persons to do or to procure to be done any act in contemplation or furtherance of a trade dispute between employers and

workmen shall not be indictable as a conspiracy if such act committed by one person would not be punishable as a *crime*." The same section proceeds to provide that nothing therein shall exempt from punishment any persons guilty of a conspiracy for which a punishment is awarded by any Act of Parliament; nor shall it affect the law relating to riot, unlawful assembly, breach of the peace, or sedition, or any offence against the state or sovereign. The word "crime" above mentioned means "an offence punishable on indictment, or an offence which is punishable on summary conviction, and for the commission of which the offender is liable, under the statute making the offence punishable, to be imprisoned either absolutely or at the discretion of the court as an alternative for some other punishment." Where a person is convicted of such an agreement or combination as aforesaid to do or procure to be done an act which is punishable only on summary conviction, and is sentenced to imprisonment, the imprisonment is not to exceed three months, or such longer time, if any, as may have been prescribed by statute for the punishment of the act when committed by one person. But an act done in pursuance of an agreement or combination by two or more persons is not actionable, if done in contemplation or furtherance of a trade dispute, unless the act, if done without any such agreement or combination, would be actionable.

Intimidation and annoyance.—Every person who wrongfully and without legal authority does any of the five acts hereinafter mentioned, with a view to compel any other person to abstain from doing or to do any act which such other person has a legal right to do or to abstain from doing, is liable to a penalty of £20 or imprisonment with hard labour for three months. The following are the five wrongful acts mentioned :—(1) Uses violence to or intimidates such other person or his wife or children, or injures his property; or (2) Persistently follows such other person about from place to place; or (3) Hides any tools, clothes, or other property owned or used by such other person, or deprives him of or hinders him in the use thereof; or (4) Watches or besets the house or other place where such other person resides, or works, or carries on business, or happens to be, or the approach to such house or place; or (5) Follows such other person with two or more other persons in a disorderly manner in or through any street or road. "Peaceful picketing" is nevertheless lawful. By sect. 2 (1) of the Trades Disputes Act, 1906, however, it is now perfectly legitimate for one or more persons, acting on their own behalf or on behalf of a trade union or of an individual or firm in contemplation or furtherance of a trade dispute, to attend at or near a house or place where a person resides or works or carries on business or happens to be, if they so attend merely for the purpose of peacefully obtaining or communicating information, or of peacefully persuading any person to work or abstain from working. *See* also APPRENTICE; CONSPIRACY; MASTER AND SERVANT; STRIKE; TRADE UNION; TRADE-BOARDS; SWEATING.

Breach of contract by gas or water employees.—Persons employed in gas or water works which operate under Act of Parliament, receive the special attention of this Act. Where such a person wilfully and maliciously *breaks a contract* of service with his employers, knowing or having reasonable cause to believe that the probable consequences of his so doing, either alone or in combination with others, will be to deprive the inhabitants of the city, borough, town, place, or part, wholly or to a great extent of their supply of gas or water, he is liable, on conviction, to a penalty of £20, or imprisonment for three months with hard labour. The gas or water company must post up at its works a printed notice of the foregoing provision in some conspicuous place, where it may be conveniently read by the employees; and as often as it becomes defaced, obliterated, or destroyed, must renew it with all reasonable despatch. By not complying with this requirement the company becomes liable to a penalty of £5 for every day during which the default continues; and every person who unlawfully injures, defaces, or covers up the notice, will be liable to a penalty of forty shillings.

THE TIME-WASTE OF STRIKES

THE TIME-WASTE OF STRIKES

SIR CHRISTOPHER FURNESS, on his return from examining trade conditions in the United States, said that if we are to hold our place in commerce, masters and men must close up their ranks and show a united front to our rivals.

In this connection, some interest attaches to the ascertainment of the amount of waste of working time that is caused by strikes and lock-outs. Here is a summary of the facts for the ten years 1899–1908, the most recent years covered by the Board of Trade return current in 1910:—

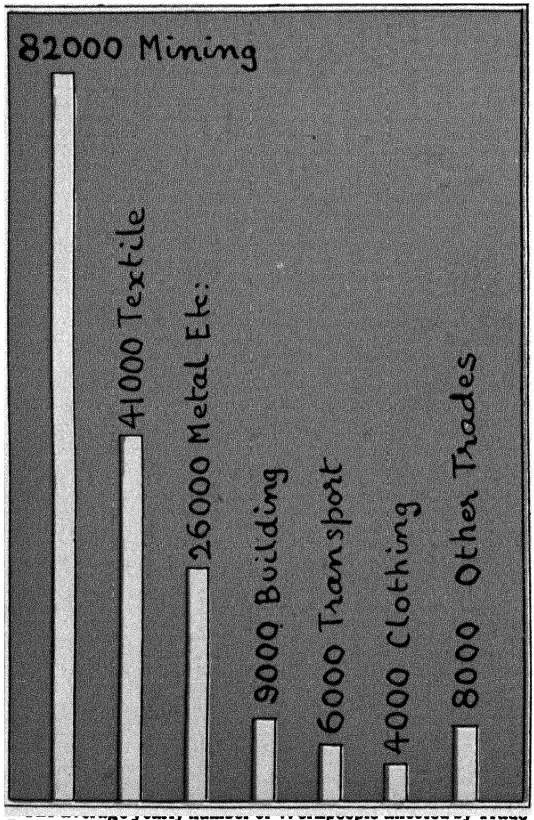
TRADE DISPUTES IN THE UNITED KINGDOM.

Period.	No of Disputes in each Period.	No. of Workpeople affected by the Disputes (including Workers directly and indirectly affected).	Aggregate duration in Working Days of all Disputes in each Period.
			Millions of Days.
1899–1903 .	2838	922,000	15.6
1904–1908 .	2199	841,000	20.0
1899–1908 .	5037	1,763,000	35.6
Yearly Averages based upon the above facts—			
1899–1903	568	184,000	3.1
1904–1908	440	168,000	4.0
1899–1908	504	176,000	3.5

Thus, looking at the yearly averages during 1899–1908, we see that more than one strike, &c., occurred during every day [504 per year], that 176 thousands of workpeople were yearly affected, and that, each year, 3,500,000 working days were lost to the nation. Each of these 176 thousands of workers lost 20 days of work, *per year*, and if we assume that five shillings represent on the average one day's wages, the yearly loss of wages was £875,000.

This is a large yearly actual loss of time and money by the workers, but it does not represent the national loss. This cannot be measured; but it includes the disadvantages to British trade arising from dislocation of industry; from temporary inability to guarantee the completion of contracts to time, an inability that causes loss of contracts; from the permanent loss of this or that piece of a manufacturing industry, which, during a prolonged strike, is snapped up by one of our foreign competitors—not to return to the British workman. And another disadvantage, not the smallest, is the prevention of a harmonious and effective unity of purpose between employers and employed.

With regard to the various trades in which workpeople have been most numerously affected by the trade disputes during 1899–1908, the facts are as follow:—



Disputes in the United Kingdom during the decade 1899–1908, in each group of Trades. Total number, 176,000 per year.

NUMBER OF WORKPEOPLE AFFECTED BY THE TRADE DISPUTES IN THE UNITED KINGDOM DURING 1899–1908, IN EACH GROUP OF TRADES.

Groups of Trades.	No. of Workpeople affected.*	Percentage of Workpeople affected in each Group of Trades.
	Thousands	Per Cent.
1. Mining and Quarrying	821	46.6
2. Textile	413	23.4
3. Metal, Engineering, and Shipbuilding .	256	14.5
4. Building	89	5.0
5. Transport (Dock Labour, Railway Men, &c.)	61	3.5
6. Clothing	44	2.5
7. Miscellaneous (including Employés of Public Authorities) .	79	4.5
Total, all Trades, 1899–1908 . . .	1763	100.0

* The accompanying diagram illustrates these facts, reducing them to the average *yearly* number, in place of the total number during the ten years here shown.

Nearly 47 per 100 of the workpeople affected by trade disputes during 1899–1908 were workers in mines, &c. This is not a satisfactory result, bearing in mind how largely the effective working of the industries of this country depends upon cheap coal and plenty. The *per capita* consumption of coal in the United Kingdom far exceeds that of any other country, with the exception of the United States, where of late years the *per capita* coal consumption has exceeded ours.

The Metal, Engineering, and Shipbuilding trades contributed 14 per 100 of the workpeople affected by strikes, &c., during 1899–1908—these trades are as important as the mining industry. These

two trade groups [Mining and Metals, &c.], taken together, have contributed 61 per 100 of all the workpeople affected by strikes during the last ten years for which the facts are known.

But this unsatisfactory fact may be due to a larger number of persons being employed in these leading industries than in some of the other trade groups. To determine this, we must take into account the number of persons employed in the various trades.

The number of w rkpeople affected by trade disputes, compared with the total number of persons employed, gives the following results for each of the four principal trade groups already mentioned :—

YEARLY PERCENTAGE OF WORKPEOPLE AFFECTED BY TRADE DISPUTES, AND THE YEARLY PERCENTAGE NOT SO AFFECTED, IN THE WHOLE YEARLY WORKING POPULATION OF EACH TRADE GROUP.

Groups of Trades.	Percentage affected by Trade Disputes.	Percentage not affected by Trade Disputes.	Total Working Population in each Trade Group.
	Per Cent.	Per Cent.	Per Cent.
1. Textile	11.0	89.0	100.0
2. Mining & Quarrying	9.0	91.0	100.0
3. Metal, Engineering, and Shipbuilding .	4.2	95.8	100.0
4. Building	0 3	99.7	100.0

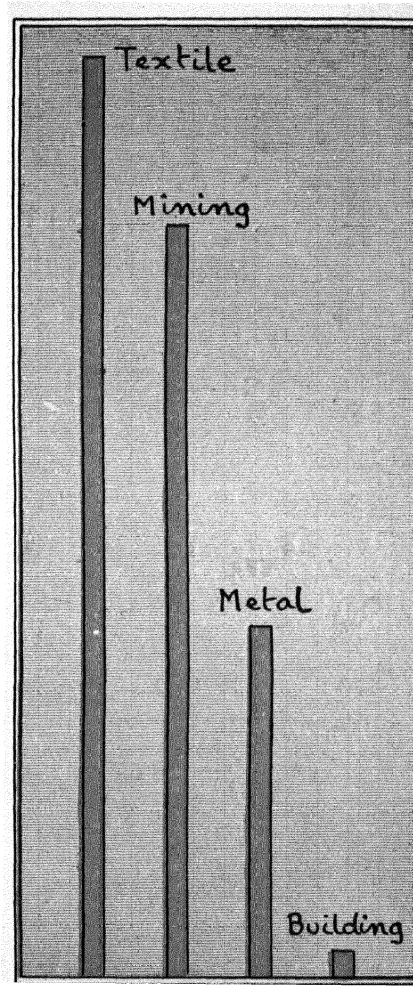
NOTE.—The above are the yearly percentages for the most recent year.

We see now that the large number of workpeople affected by strikes, &c., in the leading trade groups is not to be attributed to the cause suggested as a possible explanation, namely, to the larger number of persons employed in these trades, but that after taking into account the whole working population of each trade group, the percentage of persons affected by strikes in the leading trade groups is a much higher percentage than that obtaining in the other trade groups.

No fewer than 9 per 100 of the working population in Mines, &c., were annually affected by trade disputes. And in Metal, Engineering, and Shipbuilding, 4.2 per 100 of the working population of the trade group were annually affected by strikes. The strikes in these two groups of trades injure the vitals of the whole manufacturing industries of this country, and, as we have now seen, trade disputes are of greater intensity in these two leading groups than in any of the other less important groups, with the exception of "Textile."

If all trades affected by trade disputes be merged in one whole, and if their total working population be compared with the total number of workpeople affected by trade disputes, the result is that 2.9 per 100 of working population were annually affected by strikes, &c.

This general result may be regarded by some persons as a small proportion. But whether this 2.9 per 100 is small or not small, in itself, we have to bear in mind a far more important consideration than the bare fact that 2.9 per 100 of the working population of trades affected by strikes were workpeople annually affected by these strikes. We have to note, not only that in the leading trade groups the percentage affected was much higher than the general 2.9 per 100 [this higher percentage has just been plainly shown], but also that the fact of the two groups of trades, Mines and Metal, Engineering, &c., being injuriously affected by strikes, causes injurious effects to ramify in all directions into those other trade groups. This injurious ramification



The yearly percentage of Workpeople affected by Trade Disputes [Blue], in the whole yearly working population of each trade group.

does not show in the strike-records of these other trade groups, but it does most certainly injure those trades to an unknowable extent, in addition to the direct injury produced by the actual trade disputes which have now been shown to possess special virulence in the most important trade groups of the United Kingdom.

Our men have the strength and the intelligence to maintain this country's commercial position, and the masters have the ability to carry on the great war of commerce which is to mark the twentieth century —if both sides do their best and work in unison. But if this wretched leakage of national working energy is to continue, we cannot expect to hold our position with strong rivals pressing in on every side. The smart will be felt by our working population first, and later by the nation as a whole.

J. HOLT SCHOOLING.

EMPLOYERS' LIABILITY. — In the article on the doctrine of COMMON EMPLOYMENT reference has been made to the fact that, by entering into a contract of service, the common law infers that the workman takes upon himself the ordinary risks incident to such business as is lawfully carried on upon his master's premises, and that the negligence of a fellow-servant in the "common employment" of the master is one of such ordinary risks. The reason for this state of the law is found in the view adopted by the judges, that the servant is not bound to risk his safety in the service of his master, and may, if he thinks fit, decline any service in which he reasonably apprehends injury to himself; and in most cases in which danger may be incurred, if not in all, he is just as likely to be acquainted with the probability and extent of it as the master.

Amendment of the law.—With this doctrine of common employment dominating the law relating to the liability of an employer for injuries sustained by a workman in the course of his employment, an injured workman had little chance to obtain compensation in the event of his sustaining a personal injury. Circumstances which would exclude the operation of the doctrine of common employment, and so give the injured workman a right of action at common law, were comparatively speaking of very rare occurrence, and thus an undoubted hardship was suffered by a large and most important and deserving part of the community. To remedy this state of things there was passed, in 1880, the Employers' Liability Act, which, being an Act of an experimental nature, was only to continue in operation for a period of seven years. Its effect was found, however, to be so just and beneficial as to cause the legislature to continue its operation, and accordingly it yet remains on the statute-book. Indeed the tendency of legislation has been to most widely extend the amendment thus introduced to the common law—as witness the more recent WORKMEN'S COMPENSATION ACTS (*q.v.*). The injured worker has accordingly three alternative remedies now available to him, namely, that (whatever it may be) at common law, that under the Employers' Liability Act, and that under the Workmen's Compensation Acts. The Employers' Liability Act extends to Scotland and Ireland, and with respect to Scotland, the Sheriff's Court should, in reading this article, be substituted for the County Court, and with respect to Ireland the latter court may be taken as meaning the Civil Bill Court.

Details of the amendment.—By section 1 of the Act, it is provided that where personal injury is caused to a workman by either of the five reasons set out hereafter, the workman, or in case the injury results in death, the legal personal representatives of the workman, and any persons entitled in case of death, shall have the same right of compensation and remedies against the employer as if the workman had not been a workman nor in the service of the employer, nor engaged in his work. The following are the five reasons to which we have referred:—(1) By reason of any defect in the condition of the ways, works, machinery, or plant connected with or used in the business of the employer; or (2) By reason of the negligence of any person in the service of the employer who has any superintendence entrusted to him whilst in the exercise of such superintendence; or (3) By reason of the negligence of any person in the service of the employer to whose orders or directions the workman at the time of the injury was bound to conform, where such injury resulted from his having so conformed; or (4) By reason of the act or omission of any person in the service of the

employer done or made in obedience to the rules or bye-laws of the employer, or in obedience to particular instructions given by any person delegated with the authority of the employer in that behalf; or (5) By reason of the negligence of any person in the service of the employer who has the charge or control of any signal, points, locomotive engine, or train upon a railway. But there are *exceptions to the foregoing.* By section 2 a workman is not entitled to any right of compensation or remedy against the employer in any of the following cases; that is to say—1. Under sub-section (1), as set out above, unless the defect therein mentioned arose from, or had not been discovered or remedied owing to the negligence of the employer, or of some person in the service of the employer, and submitted by him with the duty of seeing that the ways, works, machinery, or plant were in proper condition. 2. Under sub-section (4), unless the injury resulted from some impropriety or defect in the rules, bye-laws, or instructions therein mentioned; provided that where a rule or bye-law has been approved or has been accepted as a proper rule or bye-law by one of his Majesty's Principal Secretaries of State, or by the Board of Trade or any other department of the Government, under or by virtue of any Act of Parliament, it shall not be deemed for the purpose of the Employers' Liability Act to be an improper or defective rule or bye-law. 3. In any case where the workman knew of the defect or negligence which caused his injury, and failed within a reasonable time to give, or cause to be given, information thereof to the employer, or some person superior to himself in the service of the employer, unless he was aware that the employer or such superior already knew of the said defect or negligence.

Some elucidation of the foregoing.—A glance at the above abstract of the first and second sections of the Act will at once show that although in the first section there are very material and far-reaching amendments of the original law in favour of the workman, there are yet some extremely important variations and limitations thereof imposed by section 2. In reading section 1, great care must therefore be taken to at the same time read into it the provisions of section 2. But the first things to be considered are the respective meanings of the words "workman" and "employer." The Act itself defines the meaning of the word *workman*, but only by reference to another statute, and by adding thereto the inclusion in the term of a railway servant. By following that reference the expression "workman" excludes a domestic or menial servant, but means "any person who, being a labourer, servant in husbandry, journeyman, artificer, handicraftsman, miner, or otherwise engaged in manual labour, whether under the age of twenty-one years or above that age, has entered into or works under a contract with an employer whether the contract be . . . express or implied, oral or in writing, and be a contract of service or a contract personally to execute any work or labour." To these must be added a "railway servant"; and in this connection it should be noticed that the workmen included in the above definition are limited to those engaged in manual labour. A workman, therefore, who is not engaged in manual labour is excluded from the benefits of the Act; unless he be a railway servant, in which case manual labour is not necessary in order to confer upon him those benefits. For this reason a guard of a goods train, whose work would not include manual labour, has been held entitled to recover under the Act. But as being a domestic or menial servant, the law has excluded from its benefits a public-house potman, who slept at home and went there three times a day for his meals. The question whether

a servant is a domestic or menial, and not a workman within the meaning of the Act, may be in most cases safely answered by reference to a judicial definition of a domestic or menial servant —"that he is a person whose main duty is to do actual bodily work as a servant for the personal comfort, convenience, or luxury of the master, his family, and his guests, and who for this purpose becomes part of the master's residential or quasi-residential establishment."

To be said to be engaged in manual labour within the meaning of the Act, a man—though it may be here mentioned that the Act applies equally to women—must be engaged in labour performed by hand as his real and substantial business. It is not sufficient that he takes to it incidentally and occasionally; and accordingly a grocer's assistant has been held not to be a workman within the meaning of the Act although, in addition to generally serving in the shop, he was accustomed to carry parcels up to 84 lbs. in weight to a cart outside and sides of bacon into and out of the shop, once a week to bring up into the shop out of the cellar heavy bags of groceries, and even to occasionally wheel goods in a truck between the shop and warehouse. It must be manual *labour*, not manual *work*, upon which the workman is engaged; accordingly a telegraph or writing clerk, a tramcar or omnibus conductor, or a foreman who merely gives occasional assistance to his men, would not be of the appropriate class of workmen. But a man whose sole duty it was to guide the beam of a crane by means of a guy rope, and also to give directions as to the lowering and hoisting, has been held to be a workman within the meaning of the Act; and so too have the driver of a trolley and the navigator of a lighter, each of whom had also to load and unload his vehicle or craft; and so also has a potter's printer, though he himself employed others to assist him.

The word *employer* would include a body of persons corporate or incorporate. But in considering cases which may arise under this Act, it must be clearly understood that the employer should be such relatively to the workman who has sustained the injury and who seeks compensation. Obviously if A., being in the employ of B., meets with an accident whilst passing over the premises of one C., who happens himself to be an employer of workmen, A. cannot maintain an action against C. under the Employers' Liability Act; though perhaps he may have some other remedy against him. To maintain such an action it would be necessary that C. and A. occupied the positions of employer and workman relatively to one another respectively. Though this illustration makes the general position very clear, it is yet possible that in many cases their peculiar circumstances may make it difficult to decide with facility whether or no the requisite relationship exists. And especially is this so in works the execution of which is in the hands of contractors and sub-contractors. In each case it is a question of fact, and to each must be applied a careful consideration of its peculiar circumstances. There are five important elements in the general relationship of employer and workman, and regard should be had to their existence, or to the existence of one or more of them, in any case demanding attention. These elements are: (1) Who engaged the workman? (2) Who paid his wages? (3) Who had the power of dismissal? (4) Whose work was he engaged upon? and (5) Under whose control was he?

Though each of the foregoing elements are of great importance, and it is possible that in some particular case any one of them may happen to acquire a dominating and determining importance, yet it is undoubtedly the fact that the last is, generally speaking, the chief. In order to determine, therefore, whether a certain person is the employer of an injured workman, the question should be asked: Had that person a power of controlling the work on which the workman was engaged? A certain firm engaged a man and paid his wages, but they lent him and his services to another firm and did not retain any control over him: the man having sustained an injury in the course of his employment, endeavoured to obtain recompense from the firm which engaged and paid him, but he failed, as for the purposes of this Act they were not his employers. And, consistently with this ruling, it was held that a stevedore was the employer of a winchman and liable as such, though the winchman was in fact one of the crew of the ship which the stevedore was unloading, and had been selected and paid by the stevedore only for the time being to work the winch. In another case, which went to the House of Lords (*Johnson* v. *Lindsay*), A. & Co., a firm of builders, contracted with a landowner to build certain houses, the contract providing that the defendants B. & Co., a firm of ironfounders selected by the landowner, should assist to roof the houses, for which A. & Co. were to pay and also provide scaffolding and other assistance. B. & Co. employed their own workmen. In the course of the work the plaintiff, one of A. & Co.'s workmen, was injured by the negligence of one of the workmen of B. & Co. Upon an action for damages against B. & Co. by the injured workman, it was held that the relationship of master and servant did not exist between the plaintiff and B. & Co.—that the latter were independent contractors, and that neither they nor their workmen were employed by A. & Co.; and that, therefore, the plaintiff and the defendants' workmen were not in the common employment of A. & Co. In the course of his judgment in this case Lord Watson said: "I can well conceive that the general servant of A. might, by working towards a common end along with the servants of B., and submitting himself to the control and orders of B., become *pro hâc vice* B.'s servant, in such a sense as not only to disable him from recovery from B. for injuries sustained through the fault of B.'s proper servants, but to exclude the liability of A. for injury occasioned by his fault to B.'s own workman. In order to produce that result the circumstances must, in my opinion, be such as to show conclusively that the servant submitted himself to the control of another person than his proper master, and either expressly or impliedly consented to accept that other person as his master for the purposes of common employment." In another case A. was in the employ of, and paid by, C. & Co., who were contractors with B. for the discharge of coal, but B. had no control over A., nor could he dismiss him; it was here also held that B. was not the employer of A., but that C. & Co. were his employers.

Defect.—Though it has been said on high judicial authority that the question whether the fact that a machine is unfit for the purpose for which it is applied constitutes a "defect in the condition," would seem to be a question which really almost answers itself, there have yet been presented to the courts a very large number of cases in which the determining question has involved a definition of the phrase "defect in the condition." Perhaps

the most enlightening pronouncement on the point, so far as it goes, is that of Lord Watson in *Smith* v. *Barber*, that there seemed to him to be no reason to doubt that an arrangement of machinery and tackle which, although reasonably safe for those engaged in working it, is nevertheless dangerous to workmen employed in another department of the business, would constitute a defect in the condition of the works within the meaning of the Act. But in other judgments of great weight the principle would seem to be carried further. For example, in *Heske* v. *Samuelson*, Lord Coleridge said that if the machine in question was not in a proper condition for the purpose for which it was applied, there was a defect in its condition within the meaning of the Act; and in later cases this view has been upheld and applied. Thus in *Cripps* v. *Judge*, the Master of the Rolls said: "It comes to this, that although each part might be sufficient, yet if the whole arrangement was defective for the purpose for which it was applied, there would be a defect so as to bring it within the Act." It will be noticed on reference to subsection 1 of section 2, that the defect must have arisen from or not have been discovered or remedied owing to the negligence of certain persons therein mentioned. This question of negligence is always one of fact, and must be determined according to the peculiar circumstances of the case, and it is even possible for the circumstances to be such as to cause negligence to be implied. Where the cause of the defect is unexplained and cannot be accounted for, the rule that the circumstances are themselves *primâ facie* evidence of negligence is very useful to a plaintiff. In a certain Scotch case evidence of this nature was found, where the tackle for hoisting buckets became loose from some unexpected cause. Amongst the defects which have been judicially recognised as such may be mentioned the following:—A deficiency in the hydraulic power of a machine; a bolt sound in itself, but used to bear too heavy a strain; a ladder sound in itself, but not resting securely, and having no apparatus to secure it from slipping; a fire-proof emergency door which, when used carelessly, closed defectively; the absence of some contrivance to prevent a band slipping off a machine, when the band had frequently slipped off before; a horse with vice; a passage too narrow for a person to pass through with safety; an unprotected aperture to a staircase. On the other hand a mere obstruction would not be a defect, though in Scotland it has been held that it may be so.

In reading this Act each word therein should be carefully considered. Thus in the subsection we have just been considering it must not be overlooked that the ways, works, &c., must be connected with or used in the business of the employer. It is not sufficient if they are merely connected with or used by him apart from his business, or that the business with or in which they are connected or used is one which is not connected with the employer. And in like manner great care must be taken in ascertaining the exact import of the second subsection—(1) that there must be negligence; (2) that the negligence must be that of a person in the employer's service; (3) that such person has superintendence entrusted to him; and (4) that such person was guilty of negligence whilst in the exercise of his superintendence. By the expression "*person who has superintendence entrusted to him*," is meant a person whose sole or principal duty is that of superintendence, and who is not ordinarily engaged in manual labour. A builder's foreman who handed

a plank to a workman, and called to him to take it, has been held to have been acting "in the exercise of superintendence"; and so has a man, known as a walking foreman, who did not appear to have any superintendence over the men, and whose order—the result of which was the accident—did not appear to have been within his duty. But a man whose duty was simply to guide a crane used in unloading a ship, and to give directions when to lower and when to hoist the chain attached to it, was found not to be a person having "any superintendence entrusted to him" (*Shaffers* v. *Gen. Steam. Nav. Co.*).

The next subsection (3) of section 1, which refers to the *negligence of a person whose orders the workman is bound to obey*, demands some illustration. In *Snowden* v. *Baynes*, A. was employed by D. to work at a machine in a shed. C., who was a carpenter also in the employ of B., used to receive directions from him or his foreman as to the work to be done, and to give orders to A. and others as to what work each of them should do, which orders they were bound to obey; but he had no control over the plaintiff in his work. One morning C. instructed A. as usual as to the work to be done by him. A. then proceeded to work at it, and whilst working overtime in the evening, C. began to stack timber in the shed, which was not safe for two persons to work in at the same time. By this negligence of C. the timber fell, causing injury to A. It was held that C. had no authority to order A. where to work or at what time, and that the injury to A. did not result from his having conformed to the original order of C. On the other hand, in a case where the defendants were constructing a lift, B., their foreman, told the plaintiff to get on a plank, and thereupon negligently started the lift whilst the plaintiff was on the plank, and so caused the plaintiff an injury, it was held that the injury had resulted from the plaintiff's conforming to B.'s orders. From these cases it may be laid down as a general rule that it is the negligence of the person giving the order which is the primary ground for action, but there must also at the same time be a consequent conforming of the workman to the order given.

Before leaving this part of the Act to consider the **compensation recoverable** thereunder, it is important to draw attention once more to subsections (1) and (3) of section 2, of which (1) limits the operation of subsection 1 of section 1, and (3) limits the operation of the whole Act so far as it depends upon a particular defect or negligence. Now as to the compensation recoverable under the Act. *The amount thereof* cannot exceed such sum as is found equivalent to the estimated earnings, during the three years preceding the injury, of a person in the same trade employed during those years in the like employment and in the district in which the workman is employed at the time of the injury. *Time for its recovery.*—An action for the recovery of compensation is not maintainable unless notice that injury has been sustained is given within six weeks, and the action is commenced within six months from the occurrence of the accident causing the injury, or in case of death, within twelve months from the time of death. In case of death, the want of such *notice* is no bar to the maintenance of the action if the judge is of opinion that there was reasonable excuse for the want of notice. Notice in respect of an injury under this Act must give the name and address of the person injured, and state in ordinary language the cause of the injury

and the date at which it was sustained. It must be served on the employer, but if there is more than one employer, service upon one of them will be sufficient. The notice may be served by delivering it to or at the residence or place of business of the person on whom it is required to be served. It may also be served by post, by a registered letter addressed to the person on whom it is to be served at his last known place of residence or place of business. If served by post, it will be deemed to have been served at the time when a letter containing it would be delivered in the ordinary course of post; and in proving the service thereof, it will be sufficient to prove that the notice was properly addressed and registered. Where the employer is a body of persons corporate or unincorporate, the notice must be served by delivering it at or by sending it by post in a registered letter addressed to the office, or if there is more than one office, any one of the offices of the body. A notice required by the Act will not be deemed invalid by reason of any defect or inaccuracy therein, unless the judge who tries the action arising from the injury mentioned in the notice is of opinion that the defendant in the action is prejudiced in his defence by the defect or inaccuracy, and that the defect or inaccuracy was for the purpose of misleading. The notice is not an absolute condition precedent to the maintenance of the action, and consequently where an employer has not received any notice at all, or has received one which is defective, he must himself give notice of his intention to raise the point as a defence. The following is a short form of notice which may be adapted to a particular case.

Notice is hereby given that on the day of [*date of injury*], A. B. of [*address of workman*], whilst engaged as a workman in your employ at [*place of injury*], had his arm broken [*or* was killed, *or whatever the nature of the injury may be*] by reason of [*here state the cause of the accident as exactly as possible*]. And take notice that the said A. B. requires payment of compensation in respect of the said injury [*or in case of his death:* that the relatives of the said A. B. require payment of compensation in respect of his death].

Dated this day of 19 .

To Messrs. C. D. & Co.,
of &c.

M. B., of &c.,
the wife (*or* widow) of the said A. B.

Deduction from compensation.—It is provided that there shall be deducted from any compensation awarded to any workman, or representatives of any workman, or persons claiming by, under, or through a workman in respect of any cause of action arising under this Act, any penalty or part of a *penalty* which may have been paid in pursuance of any other Act of Parliament to such workman, representatives, or persons in respect of the same cause of action. Where an action has been brought under this Act by any workman, or the representatives of any workman, or any persons claiming by, under, or through such workman, for compensation in respect of any cause of action arising through the Act, and payment has not been previously made under any other Act of Parliament in respect of the same cause of action, such workman, representatives, or person shall not be entitled thereafter to receive any penalty or part of a penalty under any other Act of Parliament in respect of the same cause of action. The Acts which provide for the payment of penalties would be mainly the Factory, Coal Mines, and

Metalliferous Mines Acts. An award of compensation by a magistrate against a driver of a metropolitan or hackney stage carriage for furious driving has been held in *Wright* v. *Lond. Gen. Omnibus Co.* to be a bar to a subsequent action by the person injured against the driver's employers.

Trial of actions.—Every action for the recovery of compensation under this Act must be brought in the first instance in a county court. Such an action may, however, upon the application of either plaintiff or defendant, be removed into a superior court. The action may be tried by a judge without a jury, but with one or more assessors for the purpose of ascertaining the amount of compensation.

Summons.—The action is commenced by an ordinary summons, and in all actions under this Act it is necessary that the summons is served thirty clear days before the day appointed for the trial. On issuing the summons the plaintiff must file particulars of his demand. These particulars must state, in ordinary language, the cause of the injury, the date at which it was sustained, and the amount of compensation claimed. Where the action is brought by more than one plaintiff, the amount of compensation claimed by each plaintiff must also be stated; and where the injury of which the plaintiff complains is alleged to have arisen by reason of the act or omission of any person in the service of the defendant, the particulars must also give the name and description of that person. If a *jury* is required, the party who so requires one must give a notice of demand therefor in writing to the registrar of the court fifteen clear days at least before the date of hearing. *Judgment where there are several plaintiffs* in one action is so given as to find and set forth the proportion of the whole damages and costs payable to each person. In case of default of payment only one execution can be levied, but the proceeds thereof will be divided amongst the plaintiffs in the proportion determined by the judgment. *Assessors.*—Where no jury has been demanded, a party who desires assessors to be appointed must, ten clear days at least before the date of hearing, file at the court an application therefor stating the number he desires, and the names, addresses, and occupations of the persons who may have expressed in writing their willingness to act as assessors. Notice of this application is sent to the other party, and he may himself apply for assessors, or file objections to any of those already proposed. If the judge grants the application for the appointment of assessors, he may appoint such of the persons proposed as he may think fit. If no jury has been demanded and no assessors applied for, the judge may appoint assessors upon his own initiative. An assessor is entitled to a fee of two guineas for each day's attendance in every action, together with such further sum, if any, as the judge may order; and in respect of this remuneration a party applying for assessors must make a deposit at the time of his application. *See* NEGLIGENCE.

ENDOWMENT INSURANCE.—This class of life insurance now comprehends those schemes of insurance which assure a sum of money to be paid at a given date, or on a certain event during the life of the assured, or upon his death if prior to that date or the happening of that event. Though an endowment assurance is more attractive to a proposing assurer than one upon his whole life, it is yet a remarkable fact that its development in relation to adult insurance is comparatively modern. And this is remarkable, because

the natural inclination of the assurer is in favour of the endowment insurance. In endowment pure and simple is an element somewhat approaching to selfishness, for a man only considers for himself what he will receive after a certain time, and goes to the insurance company to invest his money for him in the meantime. But a step further and we come to endowment *insurance*, in which selfishness gives place to some extent to the better feelings of a man, and he provides for his family in case of death and for himself in case of life. Another step further is the pure whole life insurance, which is insurance in its most perfect form, the man entirely denying himself for the benefit of others.

It is as applied to the *endowment of children* that perhaps the earliest form of this class of insurance existed, as some evidence of which we take the following curious extract from a book on Usury published in the sixteenth century: "A merchant lendeth to a Corporation or Companie an hundred pound, which Corporation hath by statute a grant, that whosoever lendeth such a summe of money, and hath a childe of one yeere, shall have for his childe, if the same child doe live till he be full fifteene years of age, 500 li of money; but if the childe die before that time, the father to lose his principal for ever; whether is this merchant an usurer or no?" The object of the endowment of children is to afford to parents the means of having their children educated and started in life. They may by this means secure to every child which may be born to them a given sum, to be paid in each case on the child attaining any specified age, say from fourteen to twenty-one years. The rates upon which the insurance can be effected may be such that the premium will cease altogether at the death of either parent, and before the eldest child can possibly attain the age at which the endowment is to become payable. Or the endowment may be secured (1) by payment of a single premium only; (2) by payment of an annual premium, ceasing at the expiration of a given term of years; or (3) by payment of an annual premium during a given term, but ceasing at the death of the father, in the event of his dying before the expiration of the term. The advantages offered to young married persons by thus securing a fixed sum for every one of their children, however great the number, must be obvious to every person who reflects on the care and anxiety attendant on providing for a numerous family. The necessary funds are thus furnished wherewith to meet the school expenses of sons or daughters, the support of sons at college, the dowry of daughters, and the entry of sons and daughters into the professions or commercial life.

And connected with the endowment of children is the scheme of *endowment annuities* whereby a provision in the shape of a temporary reversionary annuity may be secured for the maintenance, for the time being, of the assured's family after his decease. By this means the surviving children may be educated; and by commuting the annuity for a sum of ready money the children may be assisted in their outset in life, whether in business or a profession, or on marriage.

Endowment for adults.—As we have already pointed out, the system of endowment insurance, though one which naturally appeals to the assurer more forcibly than that of whole life insurance, has had its practical development in recent years only. But since the time it began to obtain a place in the favour of the public, its development has been increasingly rapid. Thus, during the period between 1876 and 1889, while ordinary Whole Life

Policies increased in amount by nearly 30 per cent., Endowment Insurances had similarly increased to close upon 400 per cent. In 1876 the latter class of business accounted for 1½ per cent. of the whole business of life assurance, but in 1889 the proportion had risen to 5½ per cent. Since the latter year the progress of endowment insurance has been probably at a still greater rate; partly the result of the inclusion of endowment assurers amongst those entitled to participation in profits, and partly the result of the increasing appreciation of the system as a means of provision for old age. In fact endowment insurance, when an annuity is substituted for the payment of a lump sum down, is a form of Old Age Pension, and to it may be added the advantage of a life insurance during the period that the endowment is accruing due, or even an insurance payable upon death whenever it may occur. Thus for a premium but little higher than that payable for an ordinary Endowment Insurance, payable at the same age, a life insurance of £1000 can be obtained payable at death together with an annuity of £50 from the specified age until death.

We are indebted to a valuable little book by Mr. William Hughes, F.I.A., entitled "Practical Information for Life Assurance Agents"—a book which should be in the hands of all who are interested in the subject of Life Insurance—for the substance of the following exposition of the principles involved in determining the premiums chargeable for endowment insurance. The single premium to secure £100 to a person aged thirty on his attaining the age of forty is the present value at the assumed rate of interest, of £100 payable ten years hence, multiplied by the fraction which represents the probability that the life in question will survive ten years. Taking the Carlisle Table of Mortality, we find that of 5642 persons now aged thirty, 5075 will survive to age forty. Hence the probability of reaching that age is, in the case of one of them, $\frac{5075}{5642}$, or nearly $\frac{9}{10}$. The sum which now invested at 3 per cent. compound interest will exactly reach £100 in ten years is £74, 8s. 2d. Multiply this by the fraction representing the probability, and we obtain £66, 18s. 8d., which is the single premium to secure £100 on the attainment of age forty by a person now aged thirty. That this premium is correct may be proved by showing its sufficiency. Let each of 5642 persons pay £66, 18s. 8d. (or more strictly, £66·931): the total amount of the fund will be £377,650. This, if invested at 3 per cent., will amount at the end of ten years to £507,500, being exactly £100 to each of the 5075 survivors. Now in this case each contributor to the fund *sinks* his premium, and runs the risk of losing it by dying in the meantime: for in the case of a simple endowment the representatives of persons dying before attaining the specified age have no claim on the fund. But suppose in the above case it were desired not only to provide £100 for each of those who reached the age of forty, but also £100 to be paid to the representatives of each of the 567 persons dying between thirty and forty. This would be an Endowment Insurance, consisting of an endowment combined with a temporary insurance. The single premium for such a benefit, therefore, will be equal to the single premium for the endowment obtained as above, added to the single premium for an insurance of £100 payable if death takes place within ten years. Calculating the latter [*see* PREMIUM], it will be found to amount to £8, 11s. 2d. Adding this to the single premium for the

Endowment, which we have seen is £66, 18s. 8d., we obtain £75, 9s. 10d. as the single premium for the combined benefit, or Endowment Insurance. To provide for the necessary expenses, of course an addition or loading would have to be charged over and above the net premium. The annual premium for the Endowment or Endowment Insurance, or in short for any benefit of the nature of an insurance, is deduced from the single premium by dividing it by the suitable *annuity due*. In the case of *whole life* insurance, the annual premium is calculated by dividing the single premium by the *whole life* annuity due. So in the case of an Endowment, Endowment Insurance, Temporary Insurance, the single premium is divided by the *Temporary* annuity due, inasmuch as the premiums are of course payable only during the currency of the risk or until the endowment becomes payable. *See* LIFE INSURANCE.

TABLE

Showing the Annual Premiums per cent. charged by certain selected Offices, for assuring a sum payable at a given age, or earlier should death intervene. With profits.

Age at entry next birthday	25				30			
Payable at age	50	55	60	65	50	55	60	65
	£ s. d.	£ s. d.	£ s. d.	£ s. d.	£ s. d.	£ s. d.	£ s. d.	£ s. d.
Office A (*for abstainers*)	3 11 9	2 19 5	2 11 2	2 5 9	4 13 2	3 14 1	3 2 1	2 14 4
B	4 0 0	3 6 6	2 18 0	2 12 6	5 2 0	4 2 0	3 9 0	3 1 0
C	4 4 11	3 11 8	3 2 11	2 17 0	5 5 8	4 5 10	3 12 11	3 4 11
D (*with a guaranteed bonus of £10 for every year until maturity*)	4 10 4	...	...	...	...	4 12 3	...	...

Age at entry next birthday	35				40		
Payable at age	50	55	60	65	55	60	65
	£ s. d.	£ s. d.	£ s. d	£ s. d.	£ s. d.	£ s. d.	£ s. d.
Office A (*for abstainers*)	6 7 7	4 15 6	3 17 0	3 5 8	6 10 5	4 19 0	4 1 6
B	6 18 0	5 4 0	4 4 6	3 12 6	7 0 0	5 7 0	4 8 6
C	7 0 4	5 7 4	4 8 4	3 16 2	7 2 3	5 10 7	4 12 1
D (*with a guaranteed bonus of £10 for every year until maturity*)	...	...	4 14 9	...	...	...	4 18 7

ENFACED PAPER, or *rupee paper*, is the name applied by Stock Exchange custom to the bonds or certificates of certain Indian rupee loans, which bear interest at 4 per cent. and upwards, and which interest is payable in

silver rupees. They are so called because the principal money, of which they are the security, is impressed or "enfaced" with the amount thereof in silver rupees on the top, bottom, and left margins of the certificates, by a band impressed from a copperplate, and which band has an appearance somewhat similar to the duty stamp fastened by the government upon a bottle or box of patent medicine or pills. There is no reason other than that of custom for applying the term to this particular class of security, unless perhaps it is warranted by characteristic appearance of the particular enfacement, or by the fact that the term is capable of thereby connoting the circumstance that the market value in London of such securities varies according to the value of silver in relation to gold. The term would be equally applicable to any other document of security such as a debenture bond or share certificate, which would also usually have marked on its face, or enfaced, the amount of the principal sum it represents. Enfacement is therefore, generally speaking, a term which carries an opposite signification to "indorsement," but it had no technical usage whatever until the year 1858, when the Indian Government began to pay in London the interest on its loans by means of drafts at sight on Calcutta. *See* INDIA COUNCIL LOANS.

ENGINEER.—This is a word of very extensive and somewhat indefinite import. Until the eighteenth century it was generally used as denoting a person who constructs military engines, and who designs and constructs military works for attack or defence. In this sense the word would now be accompanied by a qualification, and the phrase used would be "military engineer." But in the more modern and general sense an engineer would be one who combines and constructs engines; and with this taken as the meaning essentially characteristic of the word, an engineer may be said to be one whose profession is the designing and constructing of works of public utility, such as bridges, roads, canals, railways, harbours, drainage and sanitary works, electrical undertakings, and gas and water works. The scope of the profession of an engineer being thus extremely wide, a necessary specialisation has divided the profession into such divisions as that of civil engineering as distinguished from military engineering, and mechanical, electrical, mining, and sanitary engineering, to name but a few. There is no law specially relating to engineers as such, the primary rules affecting them being the general rules of the law relating to principal and agent. The engineer is nothing more than the agent of his employer or principal; but he is one who holds himself out as possessing a certain special knowledge and skill. The profession is absolutely unfettered by legal restriction, with the result that any person who pleases may practice as, and call himself, as the case may be, a civil, mechanical, mining, electrical, or sanitary engineer. But consistently with the modern tendency of free professions to voluntarily subject themselves to very high standards of ability and character, there have been formed certain societies, to the appropriate one of which every engineer who desires the confidence of the public should belong. Thus the civil engineer is usually a member of the institute of civil engineers, and may be recognised as such by the appendage to his name of such initials as M.I.C.E., an A.M.I.C.E. meaning member and associate member respectively of the institute of civil engineers. And in like manner may be found the M.I.M.E. and the M.I.E.E., or the member of the institute of mechanical or electrical engineers, as the

case may be. Generally speaking, it may be said that only those persons who are members of the institute appropriate to the class of work they undertake, are safely to be entrusted with the confidence of the public; the unattached so-called engineers should always be avoided.

The law.—As we have already pointed out, there is no law specially applicable to engineers, they being subject to the same law generally as other agents. But, as some special application of the general law, it will be useful to note a few points. First of all it should be noted that the public profession of an art is a representation and undertaking to all the world that the professor possesses the requisite skill and ability. When a skilled artisan or artist is employed, there is on his part an implied warranty that he is of skill reasonably competent to the task he undertakes. It is a general rule that where a person undertakes and is employed to perform a work of skill and labour, and fails therein, so that his employer derives no benefit from the work, the former is not entitled to recover his demand, as the employer buys both his labour and his judgment, and he ought not to undertake the work if he does not know whether he can succeed or not. But from the decided cases, it would seem that although the maps and plans of an engineer may be incorrect, yet he is entitled to a remuneration for journeys made respecting them. And an engineer must pay attention to all details incidental to the work he is actually undertaking, for in a certain case it was held that if he is employed to make an estimate for erecting a bridge and forming a road to it, he is bound to ascertain for himself by experiments the nature of the soil, although a person previously employed by his employers, having made the experiments, gives him, by their desire, information of the result. In engineering works the engineer stands in much the same relation between the employer and the contractor as does the architect in general building works. One of his chief duties in that relation is to give to the contractor a certificate as to the work he has done under the contract, so that the contractor may be in a position to draw a certain part of his remuneration from the employer. Unless it is so provided in the contract, the certificate need not be in writing; it will be sufficient if verbal. But if the contract makes the receipt of the engineer's certificate a condition precedent to the contractor's right to payment, such payment cannot be enforced by the contractor unless and until he has received the certificate. And this is so even if the certificate is delayed or withheld by the engineer's fault; and the latter cannot be sued for damages sustained by the contractor through the delay or withholding of the certificate. Payment may be obtained, however, where the certificate is delayed or withheld through the fraud of the engineer, or in consequence of collusion between him and his employer. But where the contract contains an arbitration clause, and there is no provision in the contract making the engineer's certificate conclusive and indispensable, proceedings may be taken before the arbitrator for payment, even though the certificate is withheld. And *see* ARBITRATION; ARCHITECT; BUILDING; CONTRACTOR; SURVEYOR.

ENTIRE ANIMALS. *See* APPENDIX.

ENTRY, BILL OF.—The *Bill of Entry* is the name given to an official commercial journal published daily by the Commissioners of Customs for the information of the mercantile community, and containing full particulars of all the actual shipments of goods to and from abroad. This infor-

mation is held in much esteem by merchants and shipowners as an index to the foreign markets, and as a valuable guide for the regulation of commercial operations, containing as it does details of the cargo, of deliveries from the bonded warehouses, and of other numerous and in many cases small transactions. For one thing, the information is thus obtained very much sooner than it would be if it were necessary to await the publication of the periodical Government reports; and for another, the form of publication itself is peculiarly available as a source of exact information on comparatively small matters.

EQUATION OF PAYMENTS, or Average Due Date.—This is an arithmetical operation, the object of which is to determine the amount of and date at which a single payment should be made in lieu of several different payments due at different dates. In business transactions there may often arise a necessity for such a calculation as this; it is in effect the ascertainment of a sum equal to the total amount of the discounts upon the several different payments, and of the date at which it should be paid. Suppose goods worth £500 are sold and delivered on the 1st February, another £500 worth to the same purchaser on the 9th February, and a further £1000 worth on the 11th February, the terms being a bill at three months. Of course three separate bills could be drawn on the appropriate dates for the several amounts, but it is found convenient to the parties to collect the transaction in one bill. The problem is therefore to find the amount of that bill and its average due date. To solve the problem take one of the dates, say the earliest, as the basis, compute from that date the number of days to each of the other dates, multiplying each amount by the number of those days; then total the amounts of the products, divide it by total of the amounts of each of the bills, and add the quotient to the date taken as the basis. The result is the average date. The process is as follows:—

Due Dates.		Days from May 4.	
May 4	£500 ×	0	= 500
12	500 ×	8	= 4000
14	1000 ×	10	= 10,000
	£2000		14,500

14,500 ÷ 2000 = 7¼, say seven days. Adding seven days to May 4th gives May 11th, which is the average due date in this case. The bill should therefore be drawn dated the 8th February payable three months after date. But it must be noted that the calculation has omitted any reference to the true present values or *discounts* of the respective bills, the gross amounts only being regarded. This omission is justified by the fact that the calculation would then involve the use of algebraical formulæ too elaborate for ordinary counting-house use; the difference in the result is, moreover, of too slight a character to claim attention from the business man.

EQUITABLE CHARGE.—An equitable charge or mortgage occurs where property is made a security for payment of money, but so made as not to give the person in whose favour the security is given a legal property in the subject of the security or a right to himself realise it upon default. His right is merely to apply to the court for power to realise the security. Such

a mortgage or charge is very usual in cases where the advance in respect of which the security is given is only a temporary one and is intended to be repaid in a short time. The formality and expense of a legal mortgage is dispensed with, though of course the security is not so readily available to the lender in case of default in payment. An equitable mortgage may be created by depositing the title-deeds or land certificate of the property intended to be charged; and the deposit may be accompanied by a memorandum setting out the terms and conditions of the security, and containing an agreement to execute a legal mortgage. It can also be created by a written agreement, without deposit, to execute a legal mortgage of certain specified property, or by mortgaging an equity of redemption.

We subjoin two usual forms of equitable mortgage:—

1. *Of an Equity of Redemption.*

To Mr. A. B., of &c.

In consideration of your having this day advanced to me the sum of pounds (the receipt whereof I hereby acknowledge), I hereby charge, by way of equitable security, **all that** my equity of redemption of and in the freehold hereditaments and premises situate, and being [*here describe the property*] (now mortgaged by me to Mr. E. F., of &c., to secure a sum of pounds and interest) **for securing** the payment of the said advance of pounds, together with interest thereon at the rate of per cent. per annum, on the day of next [*the date upon which the first payment of interest will be due*]. **And** I agree that I will forthwith, whenever called upon by you so to do, execute to you at my own expense a legal mortgage of the said hereditaments and premises, such mortgage to contain a power of sale and all other usual and necessary covenants and conditions.

Dated this day of 1910.

C. D.

2. *Memorandum of Equitable Deposit of Title-Deeds.*

An agreement made this day of 19—, **between** A. B., of &c. (hereinafter called "the mortgagor") of the one part, and C. D., of &c. (hereinafter called "the mortgagee") of the other part, **whereby** it is agreed that in consideration of the sum of £ to the mortgagor at his request advanced by the mortgagee on or before the execution hereof (the receipt whereof is hereby acknowledged), the mortgagor **hereby agrees** with the mortgagee to pay to him on the day of next the said sum of £ with interest thereon in the meantime at the rate of £ per cent. per annum, computed from the date hereof, and also so long as the same or any part thereof shall remain unpaid after that date, to pay to him interest thereon at the rate aforesaid, by equal quarterly payments, on the day of the day of the day of and the day of in every year. **And also** that the mortgagor, as beneficial owner, will at any time during the continuance of this security, if and when required so to do by the mortgagee, execute to the mortgagee a legal mortgage in fee-simple or (if leasehold) by demise for the residue of the term held by the mortgagor, less one day, free from all encumbrances, of the hereditaments and premises situate and being held under the several title-deeds and documents comprised in the schedule hereto for further securing the payment of

the principal sum then remaining unpaid, with interest at the rate aforesaid, such mortgage to contain all the covenants, clauses, powers, and provisions usual and suitable to the nature of the said hereditaments and premises. **And** that until the said legal mortgage shall be executed, the said hereditaments and premises hereby agreed to be mortgaged shall be and remain with intent that an equitable mortgage shall be hereby created thereupon as security to the mortgagee for, and be charged with the repayment of the said sum of £ and interest as aforesaid. **And** also that the mortgagor will pay all the costs of the mortgagee relating to the preparation and completion of the said legal mortgage [*by the addition of the following, the mortgagee will be entitled, in case of default in payment, to sell all the equitable estate of the mortgagor*:—**And** it is hereby further agreed that in the meantime, and until the execution of a legal mortgage as aforesaid, the mortgagee and his legal representatives shall have all the powers conferred on mortgagees by the Conveyancing and Law of Property Act, 1881, sections 19 to 24 and section 67, which he would have had if this agreement had been a legal mortgage, and that the mortgagor will, upon any sale made in pursuance of the said powers, execute and do all assurances and things necessary to vest in the purchaser the legal estate of the said hereditaments and premises].

In witness whereof the said parties have hereunto set their hands the day and year first above written.

Signed by the said A. B. in the presence of E. F., of &c. } A. B.

The Schedule above referred to.

Date of Deed or Document.	Parties.	Description of Deed or Document.

EQUITABLE EXECUTION is the appointment of a receiver by way of equitable relief in aid of a legal judgment, and is available in the County Court as well as in the High Court. In both courts the principles are the same, and the practice similar. The expression "equitable execution" undoubtedly tends to error and has caused a confusion of ideas to arise. It has often been used by judges, and occurs in some of the Orders of the High Court, as a short expression indicating that the person who obtains the order gets the same benefit as he would have got from legal execution. But what he gets by the appointment of a receiver is not execution but equitable relief, which is granted on the ground that there is no remedy by execution at law; it is the taking out of the way a hindrance which prevents execution at common law. The obtaining of a receivership order is not taking out execution, it is obtaining equitable relief by a subsequent order, which must be made against some one against whom the court has jurisdiction to make an order. As a general rule a receiver will be appointed only where the

ordinary modes of execution have either failed or are not available; and on making application therefor the judgment creditor must show that he has proceeded as far as possible with his other remedies; and a receiver will be appointed only where the amount of the judgment debt warrants the expense. Before making the order for a receiver, the court may direct inquiries on these or other matters. The application should be made by summons, supported by an affidavit showing the necessary facts; it is only in cases of emergency that the application may be made *ex parte*.

The following regulations, sanctioned by the King's Bench Judges, are acted upon in cases where the judgment debt is small, unless the judge making the order otherwise directs. In all cases where the judgment for debt and costs is for *more than £50 and less than £100*, a direction is added to the order that the total costs of the receiver (including his poundage, the costs of obtaining his appointment, of completing the security, passing his accounts, and obtaining his discharge) shall not exceed 10 per cent. of the amount due under the judgment. Where the judgment for debt and costs is for *a sum less than £50*, the order makes no reference to security, but directs that if the receiver is not himself the plaintiff, the latter is to be liable for the acts and defaults of the receiver. The costs of the order are not to exceed £4; and the order also provides that the receiver is not to receive more than the amount of the judgment debt and allowed costs as above, without leave of the judge, or first giving the usual security, at the plaintiff's own cost unless otherwise ordered. If the defendant is a married woman, the receiver has no power against such of her separate estate as is subject to a restraint against anticipation, unless the same is liable to execution under the special provisions of the Married Women's Property Act, 1882.

A receiver will not be appointed in respect of the future earnings of the judgment debtor unless they have been assigned or charged; nor has the court power to make a declaration of charge, on an equitable reversionary interest in personalty, in favour of a judgment creditor who has been himself appointed the receiver thereof. It is questionable whether a receiver will be appointed in respect of a debt due to the judgment debtor; but he may be appointed to collect the rents and profits of a company's land, to receive, for example, a fund in court to the credit of the judgment debtor, a reversionary interest under a will, an equity of redemption, a legacy, or the income of a trust fund. The pension of an officer is not liable to equitable execution, but money awarded in commutation of the pension would be. Where the property made the subject of an equitable execution is an equity of redemption, the receiver is entitled to take proceedings to pay off encumbrances, and may proceed to a sale or foreclosure. In the case of an equitable execution of an equity of redemption, the order should be registered under the Land Charges Registration and Searches Act, 1888, in order to be binding against a purchaser for value. The appointment of the receiver operates as an execution against the land, and directly this is obtained, the judgment creditor is entitled to the full benefit thereof, even in the event of the judgment debtor subsequently becoming a bankrupt. A creditor should exercise great discretion in proceeding to an equitable execution of a *County Court* judgment, for the only costs recoverable are such as come within the

scale appropriate to the amount of the judgment, and in no case does the scale provide for a great many of the proceedings necessary in an equitable execution; nor has the judge power to award any costs other than such as can be based upon any items included in the scale. The result is that the costs of an equitable execution in the county court must be borne mainly by the creditor himself, and cannot be recovered from the debtor. *See* DEBT COLLECTION; EXECUTION.

EQUITY.—According to Blackstone, "Equity, in its true and genuine meaning, is the soul and spirit of all law; positive law is construed, and rational law is made by it. In this respect equity is synonymous with justice." Another description, given by Selden, is worthy of notice, for beneath its humour there underlies an undoubted substratum of truth. "Equity," writes Selden in his "Table Talk," "in law is the same that spirit is in religion, what every one pleases to make it: sometimes they go according to conscience, sometimes according to law, sometimes according to the rule of court. Equity is a roguish thing: for law we have a measure, know what to trust to; equity is according to the conscience of him that is chancellor; and as that is larger or narrower, so is equity. It is all one as if they should make the standard for the measure we call a foot a chancellor's foot; what an uncertain measure would this be! One chancellor has a long foot, another a short foot, a third an indifferent foot: it is the same thing in the chancellor's conscience." And even in modern times it is impossible to elaborate an exact and positive definition of the term. The result is that any satisfactory and useful definition must adopt some such form as the following: that equity is that portion of natural justice which is of a nature to be judicially enforced, but which the old courts of the common law, for reasons of a purely technical and formal character, omitted to enforce; and this omission the courts of chancery undertook to supply, being influenced thereto by considerations of what was right in substance and in conscience. From this it will be seen that Equity had its origin in the old courts of chancery; and therewith it continued to be practically exclusively identified until the Judicature Act of 1873.

The courts of common law, such as the King's Bench, Exchequer, and Common Pleas, proceeded only by certain prescribed forms of action, and only gave relief according to certain arbitrarily distinguished kinds of actions by a general and unqualified judgment for the plaintiff or defendant. There were many cases, however, in which a simple judgment for either party, without qualifications or conditions, could not do entire justice. Some modifications of the rights of both parties may be required; some restraints on one side or the other, or perhaps on both; some qualifications or conditions present or future, temporary or permanent, ought to be annexed to the exercise of rights or the redress of injuries. The courts of *law*, as distinguished from those of *equity*, had not the necessary machinery—they could only adjudicate by a simple judgment between the parties. In the case of a judgment for payment of money, for example, the courts of law were sufficient; but in cases which arose through the more complex development of social activity, they were insufficient—they knew nothing for example about trusts, they had no machinery whereby trusts could be administered or executed under the supervision of the courts, or the rights of those interested thereunder

protected. But the courts of equity could apply the enforceable principles of natural justice to such cases as trusts, and in doing so there was in time created a body of doctrine applicable to cases outside the province of the courts of law. This body of doctrine was, and is to this day, Equity. But at the present day it is a fact that there has not, for centuries, been any uncertainty in equity; that not for centuries has it been possible to measure equity by the chancellor's foot.

In the reign of Charles II., Lord Nottingham may be said to have settled once and for all the law of trusts, or in other words the equitable doctrine of trusts. And he and Bacon, amongst other chancellors of that period, also laid down the principle—never since departed from—that equity ought to act according to rule. And so in cases other than those relating to trusts was the law settled in equity, until probably the last class of equitable case—that of "restraint on anticipation"—was created by Lord Thurlow. This Lord Chancellor is said to have been the trustee of a marriage settlement, and by his advice a clause was inserted giving the wife an income, *without power of anticipation, i.e.* without power to mortgage or charge it. The clause was copied by other conveyancers, and soon came into common use. Since the chancellorship of Lord Eldon, whatever important alterations there may have been made in equitable doctrine, have been introduced by statute, and thus, by process of time and circumstances, equity now develops in the same manner as the common law.

From the time that equity first attained an imposing and important position in the law of this country, there were always advocates for its fusion with the common law; for the Court of Chancery to also administer law, and for the courts of common law to also administer equity. But until the latter part of the last century it may safely be said that the general sentiment of those best entitled to express an opinion was against this fusion, and in favour of the continuance of the separate jurisdiction. "All nations," said Lord Bacon, "have equity, but some have law and equity mixed in the same court, which is worse, and some have it distinguished in several courts, which is better." Lord Mansfield would seem to have believed in fusion, for he made strenuous endeavours to introduce equitable doctrine into the courts of law, but his successor, Lord Kenyon, was on the side of separation. The latter judge said: "If it had fallen to my lot to form a system of jurisprudence, whether or not I should have thought it advisable to establish different courts, with different jurisdictions, and governed by different rules, it is not necessary to say; but influenced as I am by certain prejudices that have become inveterate with those who comply with the systems they find established, I find that in these courts, proceeding by different rules, a certain combined system of jurisprudence has been framed most beneficial to the people of this country, and which I hope I may be indulged in supposing has never yet been equalled in any other country on earth. Our courts of law only consider legal rights; our courts of equity have other rules by which they sometimes supersede strict legal rules, and in so doing they act most beneficially for the subject."

But fusion came at length. By the Judicature Acts, and especially that one passed in 1873, sweeping changes were made in the constitution and procedure of the courts. One Supreme Court was established, and this court

was divided into two: the High Court of Justice and the Court of Appeal. And the High Court in its turn was divided into three divisions, of which one, the Chancery Division, is made the successor of the old Court of Chancery. Though by these Acts to the Chancery Division were particularly assigned all those equitable matters which formerly had been the special province of the court of equity [*see* CHANCERY], yet it was precisely enacted that the Chancery Division, together with the common law division —the King's Bench, and the Probate, Divorce, and Admiralty Division, should constitute in fact but one court, the High Court of Justice. And to make this consolidation practicable, every division of the High Court was enabled to give relief in all cases, grant every remedy, and take cognisance of every defence in every action. A plaintiff can in the same action claim both legal and equitable remedies. It was enacted that "in every civil cause or matter commenced in the High Court of Justice, Law and Equity shall be administered by the High Court of Justice and the Court of Appeal respectively." And to meet cases in respect to which the rules of Law and Equity might be in conflict, it was provided that in the event of such conflict the rules of Equity must prevail. This does not mean that equitable principles are to be applied to matters formerly exclusively dealt with in the common law courts; but that matters which may come before another division of the High Court, and which were formerly within the exclusive purview of the Court of Chancery, are to be judged upon equitable rules.

The most important net result of the Judicature Acts, in this particular, has been to simplify the procedure in Chancery, and to extend and strengthen the jurisdiction of the common law court. At first there was some idea that all distinction between law and equity had been abolished and need never again assert itself; common law judges were to pronounce decisions in equitable causes, and Chancery judges in common law cases. The Chancery judges even went on circuit for a time trying criminal causes. But this idea was a sadly mistaken one. No self-respecting judge of the Chancery Division will to-day care to interfere with the business of the other divisions, and as little likely are the judges of the latter inclined to undertake the work of Chancery. The common lawyer is to-day as separate from the equity lawyer as he ever was, and the tendency is even towards a yet more marked distinction. Though in principle the fusion effected by the Judicature Acts was most marked and permanent, yet in detail it is hardly recognisable except in its complementary effect upon the common law.

EQUITY OF REDEMPTION.—Where a person mortgages his land, he is said to have an equity of redemption, or right to redeem the property mortgaged, upon payment of the principal and interest which the mortgage was intended to secure. The mortgagee is really the *legal* owner of the land, by reason of the mortgage deed having conveyed to him the *legal estate*, as it is called therein. But in equity, the mortgagor who has an equity of redemption, or he who is for the time being entitled to redeem, is the real owner of the land, and as such may exercise all acts of ownership over the land—subject only to the rights of the mortgagee. The mortgagor has therefore a right to settle, devise, mortgage again, and even sell the land, subject, however, as aforesaid. The mortgaged estate descends upon the death of the mortgagor according to his disposition thereof, or according to

the general law of descent as applicable to the class of property to which it belongs. Not only can the mortgagor himself redeem it, but so also may any person who has purchased the land from him, as also any person who has taken it in mortgage from him subsequently to the original mortgage. And in like manner a heir, devisee, executor, or administrator may redeem. A judgment creditor who has obtained an EQUITABLE EXECUTION against the property is also entitled to redeem. The purchaser of an equity of redemption stands in much the same relation to the mortgagee as did the original mortgagor, except that he is not personally liable to the mortgagee for the repayment of the money borrowed on the mortgage. The mortgagee must look for his payment to the property mortgaged and to the original mortgagor. But it is often the case that the mortgagee joins in the conveyance of the equity, releases the original mortgagor, and takes a personal covenant for payment from the purchaser. The latter would then be personally liable.

The doctrine of tacking.—An equity of redemption is one of the least desirable securities a borrower can offer. A person may have mortgaged a house worth £500 for only £100, but though his equity of redemption has a *primâ facie* value of £400, it is practically valueless as a security for money. The reason for this is found in the equitable doctrine of tacking. A tacking would occur as follows:—Let A., the above mortgagor, having already mortgaged his house to B., mortgage his equity of redemption to C. for a further advance of £300, and then go to B. and obtain a yet further advance of £350 upon the security of another mortgage and without B. having any notice of the mortgage to C. In such a case B. would be entitled to "tack," that is to say, he may add the £350 to the £100 already lent, and claim, in priority to the claim of C., the payment of the whole amount of £450 out of the property mortgaged. The result thereof is that C. finds himself with a security worth only £50 instead of £400 as he would expect. And on the same principle, if a person makes a loan upon the security of an equity of redemption, not knowing that the equity had already been mortgaged, he may, upon learning that the equity has been so mortgaged and the value of his security been thereby diminished, pay off the first mortgagee, and then when standing in the latter's shoes "tack," and squeeze out the second mortgagee. *See* MORTGAGE.

ESTATE.—This word, in its legal and technical sense, does not signify a piece of land or other property, but the relationship of ownership between a man and property. It is also sometimes used to signify a class or order in the state, as in the phrase "estates of the realm." But it is in the former sense that the word now claims our attention, and in that sense it may be defined as the title or interest which a person has in lands, tenements, hereditaments, or other property. According to English law, no so-called owner of land has an absolute ownership thereof; he only holds the land as tenant of the crown. There are two great classes of estate—real and personal. *Real estate* comprises lands, tenements, and hereditaments held or enjoyed for an estate of freehold; whilst *personal estate* comprises interests for terms of years in lands, tenements, and hereditaments, and property of every other description. Real estate descends to the heir, whilst personal estate is distributed among the next-of-kin; but both classes of estate vest by law in the

executor or administrator of a deceased, for since the Land Transfer Act of 1897 the executor or administrator has been constituted the real representative of the deceased as an addition to the personal representation which had hitherto always belonged to him.

All real estates, not being copyhold or customary freehold, must be either freehold or less than freehold. Of the latter class there are three kinds—estates for years, at will, and by sufferance. Of the first of these three, a leasehold interest, or tenancy from year to year, is an example which requires no illustration. An estate at will arises where land is let expressly so that the tenancy may be determined at the will of either the landlord or the tenant; whilst an estate by sufferance arises where a tenant, who has entered by lawful title, continues in possession after his interest has determined. Though no notice is required to determine a tenancy at will, the law as far as possible considers tenants at will as holding on a yearly tenancy, and thereby affords them the advantage of a six months' notice; and in the case of an estate by sufferance, though the landlord may eject the tenant at any time, yet when ejectment is sought by the aid of the law it is usual for the court to give the tenant some notice—this is especially the case when it is sought to recover the possession of SMALL TENEMENTS (*q.v.*). Estates may be either in possession or in expectancy. The former needs no explanation, but as to the latter it should be noted that such estates may be either in *reversion* or in *remainder*. Reversionary estates are considered in the article on REVERSIONS. Estates may be enjoyed in four ways—in severalty, joint tenancy, coparcenary, and in common. It is an estate *in severalty* when one tenant holds it in his own right without any other person being joined with him. An estate in *joint tenancy* exists where two or more persons hold the property between them, they having each obtained their interest therein under the same title and at one and the same time; on the death of one, his whole interest, unless disposed of by him in his lifetime, passes to the survivor or survivors. Where property is conveyed to more than one person without any special words to the contrary, the law considers that a joint tenancy is thereby created. An estate of *coparcenary* would be created in a case where an estate of inheritance, such as a freehold property, descends to two or more persons together. There is no right of survivorship here, and coparcenary generally occurs in the case of co-heiresses. An estate *in common* exists where two or more persons are possessed of a property in certain specific proportions thereof each. Thus two or more may hold it "in equal shares as tenants in common"; or A. may have only one-eighth undivided part or share therein, B. three-eighths, and C. a moiety. There is no right of survivorship in a tenancy in common, and herein is its practical distinction from a joint tenancy. All the three last-mentioned modes of joint and undivided possession may be put an end to, and reduced into severalties, by the parties interested, either by certain modes of conveyance or by partition.

There is also a distinction between a Legal and an Equitable estate. In the former the owner is in actual or legal possession of property, and is also entitled to the beneficial interest therein himself or in trust for some other person. That other person would be said to have an equitable estate in the property, for though not the actual and legal owner thereof, he is entitled to a beneficial interest therein. A mortgage would thus create two estates:

one legal, in favour of the mortgagee who is in legal possession of the property mortgaged, though he also holds it in trust for the mortgagor; the other equitable, in favour of the mortgagor, who, though not having the legal possession, is yet so beneficially entitled to the property as to have as complete a power thereover as if he were in fact possessed of the legal estate itself, and is, moreover, probably in actual possession.

ESTATE DUTY is that duty which is imposed upon the principal value of all property, real or personal, settled or not settled, which passes on the death of a person who dies after the 1st August 1894. It is regulated in the case of persons dying before the 30th April 1909 by the provisions of the Finance Acts, 1894-1900, and in other cases by the Finance (1909-10) Act 1910 also. By the term **principal value** is meant the price which, in the opinion of the Commissioners of Inland Revenue, the property in question would fetch if sold in the open market at the time of the deceased's death. But in the case of any *agricultural property*, where no part of the principal value is due to the expectation of an increased income from the property, the principal value is not to exceed twenty-five times the annual value, as assessed under Schedule A of the Income-Tax Acts, after making such deductions as have not been allowed in that assessment, and are allowed under the Succession Duty Act, 1853, and making a deduction for expenses of management not exceeding 5 per cent. of the annual value so assessed. The value of the benefit accruing or arising on the death of a deceased person from the *cesser of an interest* in any property is the principal value of the property where the interest extended to the whole income of the property, but where it extended to less than the whole income it is the principal value of an addition to the property equal to the income to which the interest extended. In case there has been any additional expense in administering or in realising *foreign property* which has been incurred by reason of the property being situate out of the United Kingdom, an allowance may be made for that expense not exceeding 5 per cent. on the value of the property; and in respect of such property a further allowance may be made for any foreign death duty.

All income upon any property down to and outstanding at the date of the deceased's death is included in the estate of which it is a part. But an allowance against the gross principal value of an estate is made for reasonable *funeral expenses, debts, and incumbrances* (including mortgages or terminable charges) incurred or created by the deceased *bonâ fide* for full consideration in money or money's worth wholly for his own use and benefit, and which take effect out of his interest. But *no allowance* is made for any debt in respect whereof there is a right to reimbursement from any other estate or person, unless the reimbursement cannot be obtained. *Nor is any allowance* made in the first instance for debts due from the deceased to persons resident out of the United Kingdom, unless contracted to be paid in the United Kingdom or charged on property situate within the United Kingdom, except out of the value of any personal property of the deceased situate out of the United Kingdom on which Estate Duty is paid. No repayment of Estate Duty is made in respect of any such debts except to the extent to which the personal property of the deceased situate out of the United Kingdom is shown to be insufficient for their payment.

Rates of Estate Duty.—The rate of the Settlement Estate Duty in the case of persons dying on or after the 30th April 1909, is 2 per cent., the rates of Estate Duty proper being according to the following scale. But in the case of settled property passing on a death on or after the 9th April 1900, where the disponer died on or before the 1st August 1894, in certain circumstances four new rates of duty, viz. ½, 1½, 2½, and 3½ per cent., are chargeable in place of 0, 1, 2, and 3 per cent. Land may be taken in satisfaction of a claim for Settlement Duty.

Principal Value of the Estate.				Rate per cent.
£		£		£
	Not above	100	... ...	0
Above	100 but not above	500	... ...	1
„	500 „	1,000	... ...	2
„	1,000 „	5,000	... ...	3
„	5,000 „	10,000	... ...	4
„	10,000 „	20,000	... ...	5
„	20,000 „	40,000	... ...	6
„	40,000 „	70,000	... ...	7
„	70,000 „	100,000	... ...	8
„	100,000 „	150,000	... ...	9
„	150,000 „	200,000	... ...	10
„	200,000 „	400,000	... ...	11
„	400,000 „	600,000	... ...	12
„	600,000 „	800,000	... ...	13
„	800,000 „	1,000,000	... ...	14
„	1,000,000 ...	... ...	... ...	15

Ascertainment of the amount payable.—Where the deceased *died on or after the 9th April* 1900, the duty is levied on the exact net principal value of the estate, both as regards rate and amount of duty, without the exclusion of any fraction of that value. An estate of £10,099, 15s. would therefore be treated as £10,099, 15s., and the duty would be at 4 per cent., and would amount to £403, 19s. 9d. But unpaid purchase money, or money borrowed, or a charge created to pay purchase money, may be deducted. *Estates not above £500 gross.*—Where the gross value of the property, real and personal, exceeds £100 but does not exceed £300, a fixed duty of 30s. *may be* paid, and where it exceeds £300, but does not exceed £500, a fixed duty of 50s. *may be* paid. Where a fixed duty has been paid, and the gross value of the property is afterwards discovered to exceed £500, the *ad valorem* duty according to the true value is payable, and no allowance is made for the duty paid at first. But where 30s. has been paid and it is discovered that 50s. should have been paid, the difference only is payable. Where the assistance of the local Inland Revenue officer is not required, the *ad valorem* duty according to the scale may be paid instead of the fixed duty of 30s. or 50s. Where the net estate is small it may be found that the *ad valorem* duty is less than the fixed duty.

Exemptions from other duties in cases not over £1000 net.—Where the net value of the property, real and personal, on which the Estate Duty is payable on the death of the deceased, exclusive of property settled otherwise than by the will, if any, of the deceased, does not exceed £1000, and the fixed duty or *ad valorem* Estate Duty has been paid upon the principal value of that estate, the Settlement Estate Duty and the Legacy and Succession Duties are not payable under the will or intestacy of the deceased in respect of that estate.

Fractions of £100 capital.—Where the deceased *died before the 1st July* 1896, any fraction of £10 in excess of £10, or of any multiple thereof, is increased to £10. So that an estate of £10,099 would be treated as £10,100, and the rate of duty would be 4 per cent., and the amount £404. An estate of £199 would be treated as £200, and would pay £2. Where duty is paid in respect of real property as well as personal property, on one affidavit or account, and there is an odd fraction of £10 in the respective capitals, and the two fractions together exceed £10, *each* class of property should be increased to the next multiple of £10. Thus Personal £1482, and Real £929 (aggregate £2411) should be treated as Personal £1490, and Real £930. Where, however, the two fractions together do *not* exceed £10, whichever of the two classes of property has the larger fraction of £10 should be increased to the next multiple of £10, whilst in the other class of property the fraction should be disregarded.

Where the deceased *died on or after the 1st July* 1896, but before the 9th April 1900:—Any fraction of £100 in excess of £100, or of any multiple thereof, is to be disregarded, except that where the principal value of the estate exceeds £100, but does not exceed £200, the Estate Duty is to be £1. So that an estate of £10,099 would be treated as £10,000, and the Estate Duty would be at 3 per cent., and would amount to £300. An estate of £10,100 would, however, be treated as £10,100, and the rate of duty would be 4 per cent., and the amount £404. An estate of £199 would by this rule be treated as £100, but it does not thereby acquire exemption from Estate Duty as not exceeding £100, but pays £1 as stated above. Where duty is paid in respect of real property as well as personal property, on one affidavit or account, and there is an odd fraction of £100 in the respective capitals, and the two fractions together do not amount to £100, each fraction is to be disregarded. Thus Personal £1422, and Real £929 (aggregate £2351) should be treated as Personal £1400, and Real £900. Where, however, the two fractions together amount to or exceed £100, whichever of the two classes of property has the larger fraction of £100 should be raised to the next multiple of £100, whilst in the other class of property the fraction should be disregarded. Thus Personal £1482, and Real £929 (aggregate £2411) should be treated as Personal £1500, and Real £900; whilst Personal £1429, and Real £982 (aggregate £2411) should be treated as Personal £1400 and Real £1000.

Settlement Estate Duty.—Where property in respect of which Estate Duty is leviable is settled by the will of the deceased, or having been settled by some other disposition passes under that disposition on the death of the deceased to some person not *competent to dispose* of the property, a further Estate Duty, called "Settlement Estate Duty," is levied upon the principal value of the settled property; *except* where the only life interest in such property, after the deceased's death, is that of the husband or wife of the deceased, or where the disposition took effect before the 2nd August 1894, or, under the deceased's will, where the net value of the property in respect of which Estate Duty is leviable on the death of the deceased, exclusive of property settled otherwise than by the deceased's will, does not exceed £1000. Where on a death on or after the 1st July 1895, Settlement Estate Duty is paid in respect of any property contingently settled, and it is thereafter shown that the contingency has not arisen, and cannot arise, the duty so paid is to be repaid. Settlement Estate Duty leviable in respect of Personal Property settled by the deceased's will (unless the will contains an express provision to the contrary), is, where the deceased died on or after the 1st July 1896, to be payable out of the settled property in exoneration of the rest of the deceased's estate. At present the rate of this duty is 2 per cent., and it may be paid, wholly or in part, by land.

By "*Settled Property*" is meant property which is comprised in any deed, will, or agreement, under or by virtue of which any land or any estate or interest in land, or any other property or interest therein, outstands for the time being limited to or in trust for any persons by way of succession. Certain property may also be settled upon trust by word of mouth and without any writing. Property over which the deceased had, and exercised by will, an absolute power of appointment, where if no such appointment had been made his estate would not be entitled, is "settled property." Where a *husband or wife* is entitled, either solely or jointly with the other, to the income of any property settled by the other under a disposition which has taken effect before the 2nd August 1894, and on his or her death the survivor becomes entitled to the *income* (as distinguished from the capital) of the property settled by the survivor, the Estate Duty is not payable in respect of that property until the survivor's death. If the Estate Duty has already been paid in respect of the settled property since the date of the settle-

ment, neither it nor the Settlement Estate Duty is again payable in respect thereof, unless the deceased was at the time of his death, or had been at any time during the continuance of the settlement, *competent to dispose* thereof, and unless the deceased, if on his death subsequent limitations under the settlement take effect in respect of such property, was *sui juris* at the time of his death, or had been *sui juris* at any time while so competent to dispose of the property. In the case of settled property, where the interest of any person under the settlement fails or determines by reason of his death before it becomes an interest in possession, and subsequent limitations under the settlement continue to subsist, the property is not deemed to pass on his death.

When duty is due.—The duty, which is collected on an Inland Revenue affidavit or account, is due on the delivery thereof, or at the expiration of six months from the death, whichever first happens. Estate Duty is, in the first instance, calculated at the appropriate rate according to the value of the estate, as set forth in the Inland Revenue affidavit or account delivered; but if it afterwards appears that for any reason too little duty has been paid, the additional duty is payable, and is treated as duty in arrear. *Simple interest* at 3 per cent. per annum, without deduction for income-tax, is payable upon all Estate Duty from the date of the deceased's death; or where the duty is payable by instalments, or becomes due at any later date than six months after the death, from the date at which the first instalment or the duty becomes due; and is recoverable in the same manner as if it were part of the duty. Where the fixed duty of 30s. or 50s. is paid within twelve months after the death of the deceased, interest is not charged. *Instalments.*—The Estate Duty due upon any account of real property may, at the option of the person delivering the account, be paid by eight equal quarterly instalments or sixteen half-yearly instalments, with interest at the rate of 3 per cent. per annum from the date at which the first instalment is due, and which instalment becomes due at the expiration of twelve months from the death. The interest on the unpaid portion of the duty is added to each instalment and paid accordingly. But the duty for the time being unpaid, with such interest to the date of payment, may be paid at any time; in case the property is sold, it must be paid on completion of the sale, and if not so paid will be duty in arrear. Estate duty in respect of any annuity, or other definite annual sum, may be paid by four equal yearly instalments, the first to be due twelve months after the death. Interest on the whole unpaid duty is added to the second and subsequent instalments. Land, including leaseholds, may be taken by the Commissioners in satisfaction of the duty.

Executor liable for the duty.—The executor of the deceased must pay the Estate Duty in respect of all personal property, wheresoever situate, of which the deceased was competent to dispose, on delivering the Inland Revenue affidavit. He may in like manner pay the Estate Duty on any other property passing on the death, which by virtue of any testamentary disposition of the deceased is under his control; or in the case of property not under his control, if the persons accountable for the duty thereon request him to make such payment. The executor is not liable for any Estate Duty in excess of the assets which he has received as executor, or might, but for his own neglect or default, have received. Settlement Estate Duty leviable in respect of personal property settled by the deceased's will, is collected upon an account to be delivered by the executor within six months after the death.

Other persons.—Where property passes on the death of the deceased, and his executor is not accountable for the Estate Duty thereon, every person to whom any property so passes for any beneficial interest in possession, and also to the extent of the property actually received or disposed of by him, every trustee,

guardian, committee, or other person in whom any interest in the property so passing or the management thereof is at any time vested, and every person in whom the same is vested in possession by alienation or other derivative title, is accountable for the Estate Duty on the property. A *bonâ fide* purchaser for valuable consideration without notice of non-payment of duty is not liable or accountable therefor.

Property subject to the duty.—The duty is imposed upon property which passes on a death. Such property includes real and personal property, and the proceeds of sale thereof respectively, and any money or investment for the time being representing the proceeds of sale. It also includes property passing either immediately on the death, or after any interval, or at a period ascertainable only by reference to death, either certainly or contingently, and either originally or by way of substitutive limitation. It also includes property of which the deceased was competent to dispose at his death, whether he actually disposed of it by his will or not. But objects of national, scientific, historic, or artistic interest form an estate by itself, and is subject to duty only when sold. A person is deemed *competent to dispose* of property if he has such an estate or interest therein, or such general power as would, if he were *sui juris*, enable him to dispose of the property, including a tenant in tail, whether in possession or not. The expression "general power" includes every power or authority enabling the donee or other holder thereof to appoint or dispose of property as he thinks fit, whether exercisable by instrument, *inter vivos*, or by will, or both, but exclusive of any power exercisable in a fiduciary capacity under a disposition not made by himself, or exercisable as a tenant for life, or as a mortgagee. Money which a person has a general power to charge on property would be property of which he has powers to dispose.

Amongst other property subject to Estate Duty may be mentioned: Donations *mortis causa*; *Inter vivos gifts* of property made by the deceased within three years of his death without reservation, unless—(1) made before 30th April 1908, (2) made for public or charitable purposes, (3) made in consideration of marriage, or (4) made as part of the deceased's normal expenditure and do not exceed £100 in the aggregate; The like *gifts* made by a deceased at any time, whereof *bonâ fide* possession was not immediately taken and thenceforth retained to the entire exclusion of the deceased, but a benefit, either charged upon the property or not, was reserved or secured to the deceased by contract or otherwise, or a power or authority was reserved to the deceased to restore to himself or to reclaim the absolute interest in such property or in some part of it—if, however, the benefit reserved or secured to the deceased is afterwards surrendered by him, so that the property forming the subject matter of the gift is, subsequent to the date of such surrender, enjoyed to the entire exclusion of the deceased and of any benefit to him by contract or otherwise for three years before his death, such property is not to be deemed to pass on his death; Property which the deceased, having been absolutely entitled thereto, either by himself alone or by arrangement with some other person, caused to be transferred to or vested in himself and some other person jointly—*as a joint investment*—either by disposition, purchase, investment, or otherwise, so that the beneficial interest in the property, or in some part thereof, passed or accrued by survivorship on his death to such other person; The deceased's severable share, as a *joint owner*, of property of which he was joint tenant or joint owner with another or with others.

Life interests are also included in the deceased's property as follows:—(1) Property which he had an enjoyment of or interest in for life, or for some period determinable by reference to death under an express or implied trust in a settlement made by him by instrument *inter vivos*, or under an express or implied trust created by him in writing or otherwise. (2) Where he died after the 31st March 1900, and he or any other person had an interest in property limited to cease on the deceased's death, and that interest was disposed of, whether for value or not, to or for the benefit of any person entitled to an interest in remainder or reversion

in the property, then it will be nevertheless deemed to pass on the deceased's death, unless the disposition was *bonâ fide* made three years before his death, and *bonâ fide* possession and enjoyment was immediately assumed thereunder, and thenceforward retained to the entire exclusion of the person who had the interest so limited to cease, and of any benefit to him by contract or otherwise.

So also are *Policies* which the deceased effected on his life, and kept up wholly or partially for the benefit of a donee, whether nominee or assignee. And *Annuities* (other than a single annuity not exceeding £25, or the first granted of two or more such annuities) or other interests which the deceased, either by himself alone or in concert or by arrangement with some other person, purchased or provided so that a benefit arose or accrued by survivorship or otherwise on the death of the deceased. *Foreign* immovable property is not chargeable with Estate Duty. Movable property situate out of the United Kingdom is not chargeable where the deceased was the owner and was domiciled out of the United Kingdom at the time of his death; it is, however, chargeable where the deceased was the owner and was domiciled *in* the United Kingdom at the time of his death. It is also, speaking generally, chargeable where the deceased was only interested for life, and at his death the property formed the subject of a British trust or was vested in a British trustee.

Exemptions.—Estate Duty is not payable on property held by the deceased as *trustee* for another person under a trust not created by the deceased; or under a trust created by the deceased more than three years before his death, where possession and enjoyment of the property was *bonâ fide* assumed by the beneficiary immediately upon the creation of the trust, and thenceforward retained to the entire exclusion of the deceased, or of any benefit to him by contract or otherwise. *Purchase.*—The duty is also not payable on property passing on the death of the deceased by reason only of a *bonâ fide* purchase from the person under whose disposition the property passes, or the falling into possession of the reversion on any lease for lives, or the determination of any annuity for lives. But the purchase must have been made, or the lease or annuity granted, for full consideration in money or money's worth paid to the vendor or grantor for his own use or benefit, or in the case of a lease for the use or benefit of any person for whom the grantor was a trustee. When any such purchase was made, or lease or annuity granted, for partial consideration in money or money's worth paid to the vendor or grantor for his own use or benefit, or in the case of a lease for the use or benefit of any person for whom the grantor was a trustee, the value of the consideration is allowed as a deduction from the value of the property.

Seamen and soldiers.—The duty is not payable on the property of common seamen, marines, or soldiers who are slain or die in his Majesty's service. Where the deceased died since the 11th October 1899, from wounds inflicted, accident occurring, or disease contracted, within twelve months before death, while on active service against an enemy, whether on sea or land, and was, when the wounds were inflicted, the accident occurred, or the disease was contracted, either subject to the Naval Discipline Act or subject to Military Law, whether as an officer, non-commissioned officer, or soldier, under Part V. of the Army Act, the Treasury may, if they think fit, on the recommendation of the Admiralty or of the Secretary for War, as the case requires, remit, or in the case of duty already paid, repay, up to an amount not exceeding £150 in any one case, the whole or any part of the Estate or other Death Duties leviable in respect of property passing upon the death of the deceased *to his widow or lineal descendants*, if the total value for the purpose of Estate Duty of the property so passing does not exceed £5000. Any application for the remission of duty must, in the first instance, be made to the Admiralty or the War Office, as the case requires.

Other exemptions.—Under certain conditions there is no duty payable in respect of Indian pensions, Church patronage, gifts to the nation, and objects

of national, scientific, historic, or artistic interest. Estate duty on *timber trees and wood* is payable only when sold. *Husband and wife.*—The duty is not payable where the deceased was entitled in right of his wife to the rents of her real estate, and by his death, on or after the 1st July 1896, she becomes entitled to the property in virtue of her former interest.

Miscellaneous.—*Aggregation.*—In order to determine the rate of Estate Duty to be paid in respect of any property passing on the deceased's death, all property so passing in respect of which the duty is leviable must be aggregated so as to form one estate, and the duty is levied at the proper rate on the principal value thereof. But, generally speaking, any property so passing in which the deceased never had an interest is not to be aggregated with any other property, but is to be an estate by itself, and the duty is levied at the proper rate on the principal value thereof; but if any benefit under such a disposition is reserved or given to the wife or husband or a lineal ancestor or descendant of the deceased, such benefit is to be aggregated with property of the deceased for the purpose of determining the rate of Estate Duty. Where the net value of the property real and personal on which Estate Duty is payable on the death of the deceased, where the death occurs at any time after the 1st August 1894, exclusive of property settled otherwise than by the will of the deceased, does not exceed £1000, that property is not to be aggregated with any other property, but is to form an estate by itself. The *forms and affidavits* upon which the duty is paid and collected should be obtained by an executor administrator from Somerset House, London, or any Money Order Post-Office outside the Metropolitan Postal District. There is no charge therefor, and instructions as to the mode of filling them up may be obtained gratis at the same time and place. When so filled up the Inland Revenue affidavit should be delivered to the Probate Registrar when application is being made for probate or letters of administration. Accounts and corrective affidavits are sent direct to Somerset House, where they will be examined and instructions issued as to the amount of duty payable and how it should be paid. When duty is to be returned, the corrective affidavit or account should be accompanied by evidence in support of the claim.

Executors, obligations, and penalties.—The executor of the deceased is, to the best of his knowledge and belief, to specify in appropriate accounts annexed to the Inland Revenue affidavit, *all* the property in respect of which Estate Duty is payable upon the death of the deceased, whether he is or is not accountable for duty thereon. The accounts and statements must be verified on oath, and by production of all necessary books and documents. Every person accountable for Estate Duty, and every person whom the Commissioners believe to have taken possession of or administered any part of the estate of the deceased, or of the income thereof, is, to the best of his knowledge and belief, required by the Commissioners to deliver to them and verify a statement of such particulars and evidence as they require, relating to any property which they have reason to believe forms part of an estate in respect of which Estate Duty is leviable. Penalties are provided for the wilful failure to deliver accounts or to comply with the requirements which the Commissioners are empowered to make. ADMINISTRATION; DEATH DUTIES; EXECUTORS; PROBATE.

ESTOPPEL is a doctrine in the law of evidence. Certain admissions are held to be indisputable; and estoppel is the agency of the law by which evidence to controvert their truth is excluded. In other words, when an act is done, or a statement made by a party, the truth or efficacy of which it would be a fraud on his part to controvert or impair, the character of an estoppel will be given to what would otherwise be a mere matter of evidence. There are three classes of estoppel. *By deed.*—Here the parties to the deed

are bound thereby, and are unable to deny anything stated therein which has operated upon the other party. For this reason a lessee cannot enter into possession of and hold the premises demised by the lease, and at the same time repudiate the lessor's title to grant the lease. *By matter of Record.*—This class of estoppel precludes a party to an action, or his successor in title, from denying any fact established by the decision in the action. There is also the wide class of estoppel *by matter in pais.* This is an estoppel by statement or the conduct of the parties. Thus a mortgagee of personal property has been held to be estopped from asserting his title under the mortgage because he had passively acquiesced in a purchase of the same by a third party under an execution against the mortgage. But mere silence or passivity will not always constitute an estoppel; there must have been a duty to speak, and an intentional inducement bound up with that silence, to some person to do some act prejudicial to himself, and to do it relying upon the inducement. Any one who accepts a bill of exchange would be held to have induced the holders to assume that the drawer was of "full" age, and otherwise capable of drawing a bill; the acceptor in such a case could not deny the drawer's incapacity. *See* EVIDENCE.

EVIDENCE.—Law may be divided into two great divisions: Substantive Law, by which rights, duties, and liabilities are defined; and Adjective Law, or the Law of Procedure, by which the Substantive Law is applied to particular cases. The law of evidence is part of the Adjective Law, and as such it decides, with a view to ascertain individual rights and liabilities in particular cases: what facts may or may not be proved in those cases; the kind of evidence to be given of facts which may be proved; and by whom and in what manner that evidence is to be produced. The law of evidence is composed of two elements, namely, first, an enormous number of cases, almost all of which have been decided in the course of the last 100 or 150 years; and secondly, a comparatively small number of Acts of Parliament which have been passed in the course of the last sixty or seventy years. Previously to the time when judicial decisions were gradually building up a systematic body of law on this subject, and particularly during that period prior to about three centuries ago, when trial by jury in its modern sense was in its infancy, the only positive rules respecting evidence were those which related to the two witnesses in treason required by statutes passed in the reign of Edward VI. The accounts of our earlier judicial proceedings contained in the state trials sufficiently prove that it was the practice formerly to admit without scruple or question every species of testimony; whereas the present law of evidence is almost wholly composed of restrictive rules, or negative rules that declare what, as the expression runs, is not evidence. The most important exceptions to this restrictive or negative development are found in the admission some fifty years ago of the parties themselves as competent witnesses in the cause, the increasing number of statutes which make the wife a competent witness against her husband in criminal trials, and the recent statute which allows a person accused of a criminal offence to give evidence on his own behalf. But apart from the removal of restrictions, so far as relates to the persons who may give evidence, it may be said that since the infancy of our modern law of evidence, the tendency has really been to contract and not to enlarge the rules of judicial evidence. And there is no doubt that, in

principle, the English law of evidence is most logical and scientific; so much so, indeed, that it may safely be said that any person who thoroughly comprehends its rules is in a position to apply his understanding and judgment to any problem of science and philosophy with the same confidence as can the philosophical or scientific specialist. In this article nothing more can be attempted than to give a very general view of the English law of evidence; but it is believed that a sufficient outline thereof can be presented to the reader to enable him to intelligently appreciate the law of evidence in its more practical and general details as well as in its principles. These principles are really the same for both civil and criminal proceedings, but certain rules peculiar to the latter must be carefully noted. We will here present the subject in the following divisions: (1) An enumeration of limitations prescribed to the competency of witnesses; (2) a brief summary of the principal rules by which the reception of oral evidence is governed; and (3) the principal rules which relate to written evidence.

Competency of witnesses.—The general rule of English law upon this subject is that all persons may be witnesses in courts of justice who have sufficient understanding to comprehend the subject of their testimony, and sufficient moral principle to ensure a right sense of their obligation to speak the truth. Thus very young children are admissible as witnesses if they have some knowledge of the nature of an oath, and a moral apprehension of the consequences of falsehood. By the *Criminal Evidence* Act, 1898, every person charged with a criminal offence, and his or her wife or husband, is now a competent witness for the *defence*. But the witness can only be called as such upon his own application; his failure to give evidence must not be made the subject of any comment by the prosecution; he may be lawfully asked questions tending to incriminate him as to the offence with which he is charged. He cannot, however, be asked any questions as to previous charges or convictions, or as to his bad character, unless: (*a*) the proof that he has been convicted of such other offence is admissible evidence to show that he is guilty of the offence wherewith he is then charged; or (*b*) he has himself attempted to affirmatively establish his own good character, or has imputed a bad character to the prosecutor or his witnesses; or (*c*) has given evidence against any other person charged with the same offence. He is generally entitled to leave the dock and give evidence in the same place as other witnesses. By the law of England all testimony, with very few exceptions, must be given under the sanction of an oath or affirmation. The form of oath is immaterial, for nothing is required beyond a persuasion upon the mind of the witness that in swearing to the truth of what he states he is appealing to a Divine Being who will punish him for falsehood. A Christian is sworn upon the Gospels, a Jew upon the Old Testament, and a Mohammedan or other person not a Christian in such form as he considers binding.

To the general rule of the admissibility of all persons of sufficient intellect, there are some important exceptions. For example, in the case of husband and wife in a *criminal* cause, a husband cannot be a witness for or against his wife, nor a wife for or against her husband except under the provisions of the Criminal Evidence Act. This exception springs from the recognition by the law of the identity of interest subsisting in the marriage relation. But if the prosecution is founded upon personal violence

committed by either of these parties upon the other, the testimony of either the husband or wife, as the case may be, is admissible. And so also is such testimony admissible, by special statutory provision, in relation to a large number of criminal offences. Of these may be mentioned: offences under the Criminal Law Amendment Act, 1885, such as certain classes of indecent behaviour, keeping brothels, and abusing girls under sixteen or children; rape, indecent assault, abduction of an heiress, forcible abduction, and abduction of a girl under sixteen; cruelty to children; adulteration and other offences under the Food and Drugs Acts; offences under the Betting and Loans (Infants) Act, 1892; offences under the Conspiracy and Protection of Property Act, 1875, such as in the case of a master neglecting to provide a servant or apprentice with food, &c., or a wilful and malicious breach of contract involving injury to person or property; and offences under the Licensing, Mine Regulation, Explosives, Merchandise Marks, Corrupt and Illegal Practices, and the Merchant Shipping Acts. In proceedings instituted in consequence of *adultery*, the parties and their husbands and wives are competent witnesses. But in these proceedings it has been provided that no witness therein, whether a party to the suit or not, may be asked or is bound to answer any question tending to show that he or she has been guilty of adultery, unless the witness has already given evidence in the same proceeding in disproof of his or her alleged adultery. Then again, in no case can a husband or a wife be compelled to disclose any communication made to him or her by his or her wife or husband during their marriage.

Other exceptions.—If the fact required to be proved is in the possession of a department of the state, no official can be made to give evidence thereof unless the head of the department allows him so to do. Nor may a juryman give evidence as to what passed between the jury to which he belonged in the discharge of their functions. An important exception is that in favour of *legal advisers*; and this exception is not made in the case of medical men or ministers of religion. It is that, generally speaking, a lawyer, whether he be barrister or solicitor, or clerk to either, is not allowed, without the client's consent, to disclose any confidential communications which have passed between him and his client in the course of their professional employment; and this is so whether the client is a party to the particular proceedings or not. But if the lawyer himself discovers a crime or fraud on the part of his client, he is not privileged from disclosing it; indeed it is his duty then to act as should any other honest and independent party; not to close his eyes to it or to further its performance, for to do so will render him a conspirator or accessory, as the case may be. And in this connection it may be noticed that no witness is compelled to answer a question, the answer to which may be considered by the judge as tending to incriminate or penalise him or her, or his or her wife or husband, as the case may be.

Reception of oral evidence.—The first general rule (which applies equally to written as to oral testimony) is that all evidence produced must be *relevant* to the point at issue between the parties. A reference to the various articles relating to the practice of the courts will show that there are always certain specified modes of proceeding, preliminary to trial, which are designed to reduce the controversy between the parties to particular issues, or propositions of fact affirmed by one or denied by the other, which are to

be decided by the judge or jury. These are called the pleadings, and even where reduced to the simplest character, never omit at least a statement of the plaintiff's claim and an implied denial of liability. That the evidence must be relevant means that the proofs in the cause are required to be strictly confined to the issues, and this rule is founded upon obvious reasons of justice and convenience. Facts which are the occasion, cause, or effect, immediate or otherwise, of relevant facts or facts in issue, or which constitute the state of things under which they happened, or which afforded an opportunity for their occurrence or transaction, are relevant. And facts not otherwise relevant are relevant (1) if they are inconsistent with any fact in issue or relevant fact; (2) if by themselves, or in connection with other facts, they make the existence or non-existence of any fact in issue, or relevant fact, highly probable or improbable.

Secondly, the *affirmative* of every issue is to be proved; that is, the party who asserts the affirmative of a proposition must prove it. This obligation to prove the affirmative is known as the general burden, or onus, of proof; and when it is doubtful upon which of the parties it rests, it may be taken as resting first on that party against whom the judgment of the court would be given if no evidence at all were produced on either side, regard being had to any presumption which may appear on the pleadings.

Thirdly, in proving a fact, the best evidence of it must be given of which the nature of the thing is capable. Thus a party is not permitted to prove the contents of a deed by a copy, and still less by oral testimony, where the deed itself may be produced; nor to prove the execution of a deed by any other person than a subscribing witness, when he is living and producible. Such best evidence is called *primary* evidence, and the rule requiring its production in preference to more remote, or *secondary* evidence, is justified by the presumption which the offer of secondary evidence raises, that the production of the best evidence might have prejudiced the party in whose power it is, had he produced it. But this rule must not be understood as requiring that all the evidence which can be given upon the facts in dispute should be produced; as, for instance, if there are several attesting witnesses to a deed or other contract, it is not necessary that more than one should be called.

Fourthly, *hearsay* testimony, which is a formal statement on oath or affirmation of what an absent person has said, or book or document contains, respecting a fact to be proved, is in general excluded both on the ground that the witness to the actual fact does not declare his knowledge upon oath, or the book or document is inadmissible or not produced, and also because he or the book or document is absent from the cross-examination or criticism of the party who is to be affected by what is stated. In affidavits in interlocutory proceedings this class of evidence is admissible, but it is necessary that the deponent should state that he personally believes it to be true and also state the grounds upon which he bases his belief. Though in legal evidence hearsay is always most strenuously objected to and rigorously rejected, yet curiously this rule of rejection is probably the one that the layman least understands and most frequently infringes. But to this rule excluding hearsay there are exceptions. (1) The *declarations of deceased persons*, who were at the time of declaration in imminent danger and under the apprehension of immediate death. Such persons are considered to be

speaking under as powerful a religious sanction as the obligation of an oath; for it should be noticed that they must be not only in danger of death, but themselves conscious of and apprehending it immediately. This class of evidence is very usual in cases of manslaughter and murder. (2) As another exception to the rule against the admission of hearsay may be mentioned *admissions made by agents* or other persons, as to the fact in issue, who are jointly interested with the parties to the action in the subject-matter. But the mere fact of several persons having a common interest in the same subject-matter is not of itself sufficient to enable the admissions of one to be used against the others; their relationship to each other with regard to the subject-matter and to the fact in issue must be such as to make each one an agent of the others. A report made by an agent to his principal is not an admission which can be used against the latter by a third party; nor is any statement made by the principal regarding the matters for which a surety has given security evidence against the latter. Some examples will illustrate this question of admissions. In an action against a railway company for the loss of a parcel which, it was alleged, had been stolen by one of its servants, it was held that a statement made by a stationmaster to a police-officer, suggesting that the parcel had been stolen by a porter, was admissible in evidence against the company. A. was surety for B., a clerk, who made statements to his employers as to certain irregularities of which he had been guilty; it was held that these statements were not evidence against A. If A., B., C., and D. are the joint and several makers of a promissory note, they may each make statements relating thereto which will be evidence against the others. A. kept a shop, and in his absence it was managed by his wife; the latter's statement that A. owed money for certain goods supplied to the shop, was held to be evidence against him. And so if a man sends his servant to sell a horse, whatever the servant says at the time of the sale, and as part of the contract, will be evidence against the master. It is possible for admissions to be made "without prejudice"; when this is so the court will refuse to accept them in evidence. The fact that they are made without prejudice should appear clearly in connection with them, but a judge may, from the circumstances of the case, infer that they were so made.

Confessions should be distinguished from admissions. The definition given by Mr. Justice Stephen of a confession is that it is "an admission made at any time by a person charged with a crime stating or suggesting the inference that he committed that crime. Confessions, if voluntary, are deemed to be relevant fact as against the persons who made them only." A confession would not be voluntary if caused by any threat, promise, or inducement made by any one having authority over the person confessing and having reference to the charge against the latter; nor if the person in authority holds out a reasonable prospect of material gain or advantage as the result of the confession. A master has for this purpose authority over a person confessing, only when the latter committed the offence with which he is charged against his master. (3) The declarations of deceased persons, and made in the ordinary course of business and against their own interest, and at or near the time when the matter stated occurred, and of their own knowledge; as for example charging themselves with the receipt of money

on account of third persons, or acknowledging the payment of money due to themselves. (4) The declarations of deceased persons respecting *rights of a public nature*, such as the boundaries or general customs of a manor or district. (5) The declarations of deceased persons on questions of *pedigree* or family occurrences of ancient date before the memory of living witnesses, such as births, deaths, or marriages. (6) The declarations of *a deceased testator* as to his testamentary intentions, and as to the contents of his will, are placed by Mr. Justice Stephen as relevant and admissible when the will has been lost and there is a question as to what were its contents; or the question is whether an existing will is genuine or was improperly obtained; or the question is whether any and which of more existing documents than one constitute his will. In all these cases it is immaterial whether the declarations were made before or after the making or loss of the will.

Written evidence.—*Acts of Parliament*, when public, are received in courts of law without express proof, for every one is presumed to know the law which he is bound to obey. But private acts are regarded as documents relating to individuals, and must therefore be proved; this may be done by producing copies thereof purporting to be printed by the King's printers. *Records* of courts of justice are proved by exemplifications thereof, or office copies, which latter are made and sealed by a duly authorised officer of the court. *Charters and deeds* are proved by the production of the instrument and proof of the execution thereof by the party to be charged with it; but where the document is more than thirty years old, and produced out of the custody of the person naturally in charge of it, the execution need not be proved, and the document is said to prove itself. When proved, a document is presumed to have been executed on the date it bears, and if two or more documents connected with one another bear the same date, they will be each presumed to have been executed in the order of time implied by the connection. Unless there is evidence to the contrary, all alterations and interlineations occurring in a deed are presumed to have been made before its execution; but the only presumption in the case of a document not under seal is that the alterations and interlineations were made without unlawful intent. Where a judicial proceeding, or a contract or grant, has been reduced into writing, the general rule is that no evidence as to the terms thereof may be given except by production and out of *the writing itself*; but if the existence of a relationship alone is intended to be proved, and not the terms and conditions incidental thereto, it is sufficient to tender oral evidence notwithstanding that the relationship may have been created in writing. Nor need the document be produced if it were not legally necessary for the creation of the contract, and was merely a memorandum thereof and not intended to itself have any legal effect. When in evidence, a document must be read alone, and not contradicted, altered, added to, or varied by oral evidence; but to this rule there are some exceptions. For example there may be also proved by oral evidence: (1) anything which will tend to invalidate the document or any part thereof, as fraud, illegality, mistake in fact or law; (2) anything in respect to which the document is silent and is not inconsistent, provided it does not appear to be expressly conclusive between the parties as it stands; (3) anything in the nature of a condition precedent to the operation of the document; (4) an express, separate, and subsequent

legal oral agreement intended to rescind or modify the effect of the document; (5) a usage or custom usual in connection with the particular document, and not excluded by repugnancy or inconsistency.

When the original document cannot be produced its contents may be proved by *secondary* evidence. But before the court will accept secondary evidence it requires to be satisfied that every effort has been made to obtain its production. Generally, the circumstances under which secondary evidence of a document may be given are either: (1) Where it has been lost or destroyed by accident; or (2) where it is in the possession of a party to the suit against whom it is sought to be produced, and who refuses to produce it. In the latter case the party who intends to give secondary evidence of the document must first give to his opponent an express notice to produce the original. The best way in which to prove a document which cannot be produced is by a draft or copy thereof; failing either of these means oral testimony must be given as to its contents. But there is not, strictly speaking, any degrees of secondary evidence, and consequently oral testimony is as available as a draft or copy; but should a witness be unable to show that he had made every effort to produce better evidence before resorting to a mere oral testimony, his conduct in relying upon the latter may be made the subject of adverse criticism and may tend to disparage the value of his evidence. *See* ADMISSIONS; DISCOVERY; ESTOPPEL.

EXCHEQUER BILL.—This is a security created by the Treasury in order to raise money for temporary purposes to meet the necessities for the time being of the national exchequer. The word *bill* has probably but very little connection in its meaning to the same word as used in commercial transactions, as for example in the designation "Bill of Exchange"; its origin, as a voucher issued by the Exchequer, is probably found in the wooden tally or *billet* which in olden times was handed as a receipt to the person who paid money into the Exchequer. These bills, in practically the same form as they exist to-day, were introduced in the reign of William III., there being at that time a great scarcity of actual money, and the object was to provide something in the nature of paper money which could "pass in payments from any person or persons to any other person or persons that shall be willing to accept and take the same." But later on in the same reign it was specially provided, in order to extend their circulation, that they should pass in payment of all taxes, duties, and "in all payments at the exchequer due to the king." A practice subsequently arose for the Government for the time being to redeem the outstanding bills by the process of "funding," or creating a funded debt by the issuing of a Government loan and accepting exchequer bills in part payment of any stock applied for.

At the present day the issue of exchequer bills is subject to the provisions of 29 Vict. c. 25, whereby the interest on the outstanding bills, instead of being carried at a rate of so much pence per cent. per day (as had been formerly the case), is fixed and advertised by the Treasury every half-year, varying with the rate of interest ruling at the time in the money market. On this account these bills are much sought after by banks and capitalists, as if the interest for the time being is not satisfactory to them, the bills can be treated in effect as ready money, and paid to the Government, instead of cash for cus-

toms, excise, or other duties. Exchequer bills are practically ready money which carries interest; but the latter never exceeds 5½ per cent. per annum, and has never been less than 2½. Apart from their availability for payment to the Government, they are also readily saleable in the market, and generally at a premium. Exchequer bills are prepared and issued by the Bank of England, and bear the nominal value of £100, £200, £500, or £1000 each. No date of redemption is specified therein, but each bill carries with it a sheet of ten coupons for a half-year's interest each, at the rate to be fixed from time to time for the dates to which the coupons respectively refer. The half-yearly coupons should be presented at the Bank of England, and when they are exhausted, the holder of the bill has the option of renewing it for another five years instead of receiving payment of the principal to which he is entitled. But at the end of any twelve months he is entitled to claim payment of the principal; should he not then do so, another claim cannot be preferred until the end of the next twelve months. It is only during the currency of the *last six months* of *any* year from the date of the bill that the holder is entitled to pay it away, as before mentioned, in discharge of customs, excise, or other duties payable to the Government. And *see* EXCHEQUER BOND; TREASURY BILL.

EXCHEQUER BOND.—Exchequer bonds are issued by the Treasury under the authority of the same Act as exchequer bills, but, unlike the latter, the bonds are securities which run for a specific period of time which in no case can exceed six years. When the period for which a bond has been issued has expired, the security is said to have matured, and it must then be presented by its holder for payment, for upon maturity all interest thereon ceases to be payable. The interest is fixed at the time of issue, and there is no variation in its rate during the currency of the security. Coupons for the interest are affixed to each bond, and they should be presented for payment at the Bank of England upon the appropriate dates; but if the holder of a bond wishes to have it registered or inscribed in the books of the Bank of England, he may do so, no coupons being in this case available, the interest being paid only upon personal application or otherwise as provided with regard to DIVIDENDS (*q.v.*) on Consols. Exchequer bonds are transferable by delivery. *See* also EXCHEQUER BILLS.

EXCISE is the name given to those duties or taxes levied upon articles of consumption which are produced within the kingdom itself, as distinguished from customs duties which are levied at the ports upon commodities imported from abroad; but exclusive of these, certain duties on licenses, as for example an auctioneer's, are also placed under the management of the excise authorities, and are thus included in the excise duties. The Commissioners of Inland Revenue constitute the authority charged with the collection of these duties. For many years before excise duties were imposed in England, they had been a constant and lucrative source of public revenue in Holland, and it was probably because of the example afforded by the latter country that the Long Parliament in 1643 introduced the system by the imposition of a tax upon beer,

cider, and perry, of home manufacture. At its inception the excise was administered by the customs authority, but at the present day these two sources of revenue are each administered by its own appropriate authority. Oliver Cromwell having been so prompt in recognising the value of the excise duties as a means of furnishing the funds for his operations against Charles I., the latter's son was careful not to let them drop out of use, with the result that they were finally, by statute, granted to the crown as part of its revenue. At the present day the excise duties are resigned by the crown in favour of the national exchequer.

For a long time these duties were the subject of a deep and universal dislike by the people. Perhaps the chief cause of this dislike can be traced to the fact that the imposition of the duties was mainly upon articles of food and general utility; that they tended to raise the price of the necessaries of life, and to increase the cost of subsistence of the people. Another cause of the dislike lay probably in the administration of the excise laws. Down to well within the last century they were, for the most part, singularly obscure and contradictory, so that it was hardly possible for any trader, however much he desired to comply with their provisions, to avoid getting into scrapes. Prosecutions for attempting to defraud the revenue or for smuggling, however intentional or unintentional an infraction of the law may have been, were always tried without a jury. No wonder, therefore, that the excise should have been unpopular. But certainly a cause equally potent was the inquisitorial and interfering regulations which the Government was bound to introduce in order to effect the collection of the duties, and which more closely affected the capitalist class. Nor was this latter cause of dislike a merely sentimental one, for it would seem that it had a very real foundation in fact. These regulations, for at least a century and a half, seriously interfered with the processes of manufacture, and prevented the adoption of improvements. In the printing of cloth, for example, double the quantity of cloth was afterwards printed, upon the same premises, with the same capital, and with the same amount of labour as could have been printed prior to the repeal of the duty affecting that manufacture and of the incidental excise regulations. The abolition of the excise duty on glass was avowedly made with the object of facilitating improvements in its manufacture. And curiously enough, those regulations themselves, drastic and far-reaching though they were, appear in many cases but to have been chiefly effective as aids to the actual evasion of the excise duties. Thus in one of the reports of the Commissioners appointed to inquire into the management and collection of the excise revenue, it was stated as a striking proof of the extent to which frauds were then committed by manufacturers of soap, that "there were in England fifty that take out licences, for which they pay £4 per annum, each of which makes, or rather brings to charge, less than one ton of soap per annum, from which it is obvious that as the profits of such sale would not pay for the licence, the entry is made in order to cover smuggling." With regard to malt, another article of great consumption which was then subject to excise duties, the Commissioners state it as their opinion, founded upon the evidence given by several respectable maltsters, "that malt was sold throughout the season, and in great quantities, for a price insufficient to pay the expense of making it and duty, and that the duty was evaded to a great amount."

DRINK

DRINK

THE importance to national revenue of alcoholic beverages as a means of taxation is shown in the following statements, based upon the most recent returns issued up to April 1910. Yearly average :—

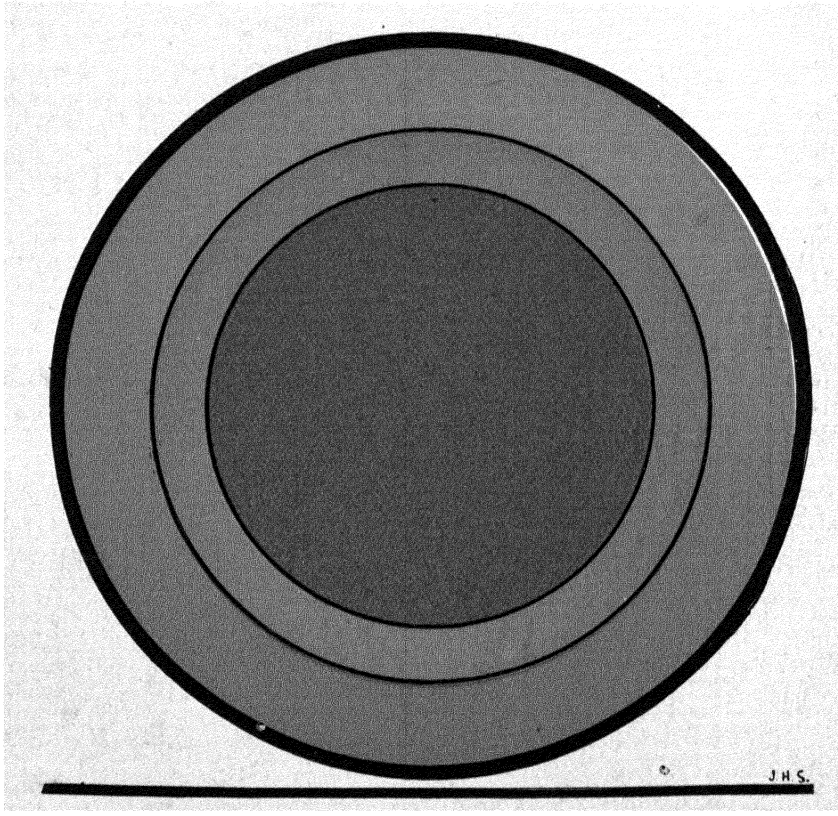
Country.	Total Drink Duties (a).	Percentage of (a) on the National Revenue of each Country.
	Million £	Per cent.
United Kingdom. .	34.4	27
United States. . .	42.8	27
France	16.8	14
Germany	13.4	5
Total. . . .	107.4	..

Of these four countries, the United Kingdom and the United States derive the largest proportion of National Revenue from the taxation of drink, the British percentage (27) being nearly twice as much as that of France, and nearly six times as much as in Germany.

The preceding Drink Duties are made up thus :—

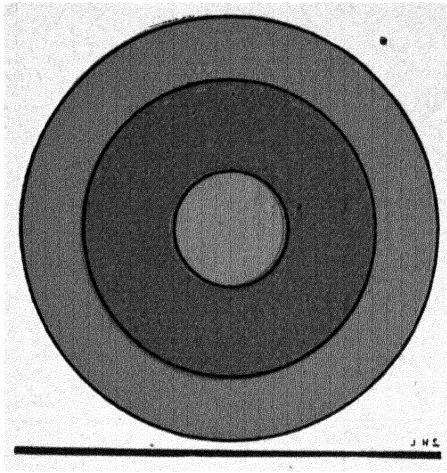
Country.	Drink Duties.			
	Spirits.	Beer.	Wine.	Total.
	Mill. £	Mill. £	Mill. £	Mill. £
United Kingdom .	20.6	12.6	1.2	34.4
United States . .	29 9	11.7	1.2	42.8
France	13.2	0.6	3.0	16.8
Germany	7.0	4.8	1.6	13.4
Total . . .	70.7	29 7	7.0	107.4

We see that in each country the Duties derived from Spirits are materially larger than those derived from Beer or from Wine. Beer comes second and Wine-duties third. France is the only exception to this. France has a very large Wine-bill, that comes second to Spirit-duties.



1. Black . . United States, 42.8 mills.
2. Red . . . United Kingdom, 34.4 mills.
3. Blue . . France, 16.8 mills.
4. Purple . . Germany, 13.4 mills.

The Total National Receipts from Drink Duties, represented by the area of the four discs.



1. Blue . . . . Spirits, 20.6 millions.
2. Purple . . . Beer, 12.6 ,,
3. Red . . . . Wine, 1.2 ,,
Total . . . 34.4 ,,

Showing how the Receipts from Drink Duties in the United Kingdom are made up.

The sources of the drink consumed in each country, *i.e.* Home-produced or Imported, are:—

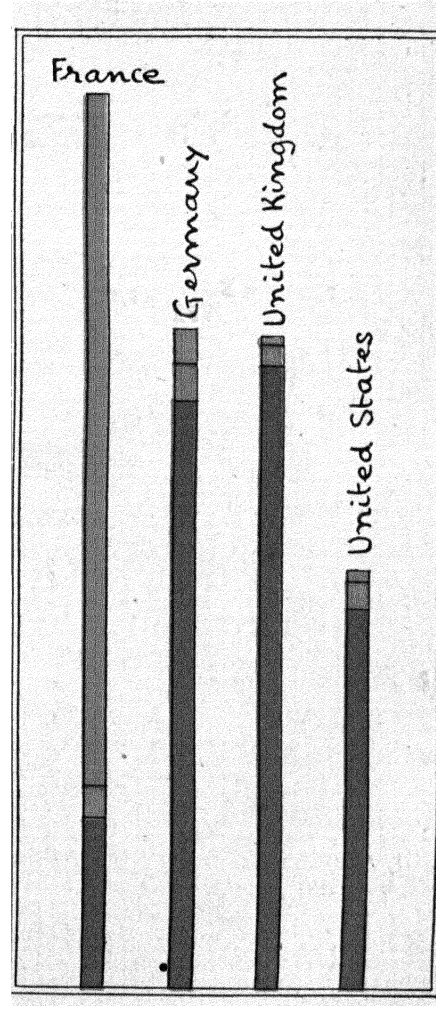
Country.	Spirits.		Beer.		Wine.	
	Percentage made at Home.	Percentage Imported.	Percentage made at Home.	Percentage Imported.	Percentage made at Home.	Percentage Imported.
	Per cent.	Per cent.	Per cent.	Per cent.	Per cent.	Per cent.
United Kingdom . . .	83	17	100	0	0	100
United States	98	2	100	0	84	16
France . . .	93	7	99	1	90	10
Germany . .	99	1	99	1	82	18

The above figures show that by far the largest proportion of the drink consumed is home-produced. It is only in the United Kingdom that any appreciable quantity of imported drink is consumed, owing to the large quantities of imported spirits and wine; nearly 20 per cent. of our spirits come from abroad, and the whole of our wine is imported. As regards beer, only 2 pints per 1000 pints consumed are imported.

In the United Kingdom, 16 per cent. of the Drink Duties come from Customs (imported drink), and 84 per cent. from Excise (home-made drink).

The average yearly consumption per 100 of population is as follows:—

Country.	Consumption per 100 of Population.			
	Spirits.	Beer.	Wine.	Total.
	Gallons.	Gallons.	Gallons.	Gallons.
France	137	750	3080	3967
Germany	143	2630	145	2918
United Kingdom .	91	2770	32	2893
United States . .	126	1680	43	1849



Purple—Beer. Blue—Spirits.
Red—Wine.

Consumption of Drink per 100 of Population.

For actual figures see text.

DRINK

The French drink more, per head, annually than the British. The French drink 39.7 gallons per head, and the British 28.9 gallons per head. Moreover, the French drink nearly twice as much spirits as the English, per head, and an infinitely greater quantity of wine. The relatively harmless beer is but slightly drunk in France. Germans also drink more per head than the English.

Comparing the consumption per head of the four nations, Germany drinks the most spirits, the United Kingdom drinks the most beer, France drinks the most wine, and France has the largest consumption, per head of the population.

The United States has the lowest total consumption, per head of population, but they drink more spirits than ourselves, and their consumption of beer is much less than in England or Germany.

J. HOLT SCHOOLING.

In 1822 the Excise duties yielded for the United Kingdom twice as much as the Customs duties. The receipts from Customs were £14,384,710, and from the Excise £31,190,948. By 1900–1901 the proportionate difference between these two classes of duties had most materially decreased, the figures being: Customs, £26,262,000; Excise, £33,100,000. To the latter sum, intoxicants contributed the large proportion of £32,697,310. And this would appear to be the result of a consistent policy which has in view the taxation of luxuries before necessities; for this large contribution to the revenue by alcohol is not by any means a strikingly modern feature in the history of the Excise. Indeed, over a hundred years ago the poet Cowper warmly adverts to the same fact in the following rather irrational verses in "The Task":—

> "*The Excise* is fattened by the rich result
> Of all this riot, and ten thousand casks
> For ever dribbling, and their base contents,
> Touched by the Midas finger of the State,
> Bleed gold for ministers to sport away."

Originally, as we have seen, the excise duties were confined to beer, cider, and perry. Subsequently they were extended to such commodities as hops, paper, salt, hats, silks, stuffs, starch, sweets, candles, and soap, amongst a very large variety of others; but at the present time they are imposed only upon beer, spirits, chicory, imitations of and substitutes for coffee and chicory, coffee and chicory mixtures, playing cards, glucose, and saccharine. The license duties are not strictly duties of excise, being properly a part of the stamp revenue; but as they are for the most part collected by the excise and not the stamp authorities, they are included in the list of excise duties set out below. Even the railway passenger duty is now collected as excise revenue.

From the above it will be seen that the most important problem for the Government, after it has once satisfactorily determined what commodities should be subject to the excise duties, is a provision for an effective administration of the law. Generally speaking, it may be said that the present system of administration is as free from undue interference with private effort, as harmonious with the spirit of personal liberty, and as effective in its financial results as any scheme which could be devised. One of the most characteristic, and at the same time one of the most generally appreciated features of our present system, is the bonded warehouse. And yet when Sir Robert Walpole proposed the establishment of bonded warehouses, his proposals encountered so bitter and extreme a popular opposition—the fiercest in the modern Parliamentary history of our country—as to cause its abandonment, and to make that abandonment the subject of a celebration throughout the country as of a national victory. The bitterness and the unreasonableness of the opposition was exemplified for all time by a strenuous supporter of the opposition, one Dr. Johnson, in his dictionary. There, it is summed up in his prejudiced definition of the word "Excise": "A hateful tax levied upon commodities, and adjudged not by common judges of property, but by wretches hired by those to whom excise is paid." No wonder, when such a man took up such a position, that the general populace found an expression of their views on the subject in such cries as "No slavery, no excise, no wooden shoes."

LIST OF EXCISE LICENCES AND DUTIES

APPRAISERS, *U.K.* £2 0 0

For the purposes of the Excise Acts, an appraiser is a "person who shall value or appraise any estate or property, real or personal, or any interest in possession or reversion, remainder or contingency, in any estate or property, real or personal, or any goods, merchandise, or effects of whatsoever kind or description the same may be, for or in expectation of any hire, gain, fee, or reward, or valuable consideration to be therefore paid him." No one can "exercise the calling or occupation of an appraiser" without taking out a licence; and accordingly there is no need for such a licence in the case of a person who does not follow that business, but only in a single instance makes a valuation for the guidance and information only of the person employing him. But if the appraisement is one which is subject to stamp duty or is for the purposes of probate, it would be necessary for the appraiser to have a licence. The licence must state the true name and place of abode of the appraiser; it expires on the 5th day of July in each year, is not issued for parts of a year, and is not transferable. The penalty for acting as an appraiser without a licence is £50, but licensed auctioneers and county court bailiffs are exempt from this duty.

ARMORIAL BEARINGS, *Great Britain* 1 1 0

In this term is included any armorial bearing, crest, or ensign, by whatever name it is called, and whether it is registered at the College of Arms or not. The duty is payable annually, and any person is subject to it who uses any article upon or to which is affixed or attached an armorial bearing. In accordance with this principle, it has been held in Scotland that a person who wore a signet ring upon which there was a device—a shield charged with a lion rampant, surmounted by a crown with a bar at the base of shield but with no wreath—was liable to the duty. So long as the device is in effect a crest, ensign, or armorial bearing, the wearer or possessor of the ring or other article carrying it is liable; it is no defence that the armorial bearing has no relation itself to the possessor. And consistently with this view, it is enacted that any person who keeps and uses any carriage, whether owned or hired by him, is deemed to wear or use any armorial bearings painted or marked thereon or affixed thereto.

If used on any CARRIAGE 2 2 0

A licence need not be taken out by a person duly licensed to keep or use any public stage or hackney carriage for any armorial bearings painted or marked thereon.

AUCTIONEERS, *U.K.* 10 0 0

This licence is annual. A licensed auctioneer may carry on business as an appraiser or house agent without further licence.

BANKERS' LICENCE 30 0 0

BEER—per barrel of specific gravity of 1055 (55° gravity) . . . } These are now set out in the article on LIQUOR LICENCES in the Appendix to Vol. IV.

BEER-DEALERS' AND BREWERS' Annual Licences:—

Beer-dealers, wholesale, not brewers, *U.K.* . . . . . }

Beer-dealers to sell in any quantity, additional, not to be consumed on the premises, *England and Ireland* . . . . }

Brewers brewing beer for sale, *U.K.*
Other Brewers, *U.K.*, annual value of house exceeding £8 but not exceeding £10
The annual value of house exceeding £10 but not exceeding £15
Ditto in every other case in addition to the duty on the beer made
Retailers of beer, cider, and perry :—
For consumption on the premises, *U.K.*
Not to be consumed on the premises, *England*
Retailers of table beer (off), *U.K.*
Retailers of beer, *Scotland* (off licences), rated under £10
Retailers of beer at £10 or upwards
Retailers of beer and wine, *U.K.* :—
For consumption on the premises
Not to be consumed on the premises

These are now set out in the article on LIQUOR LICENCES in the Appendix to Vol. IV.

CARRIAGES, annual licence (*Great Britain*) :—

Hackney Carriages £0 15 0

By a "hackney" carriage is meant any carriage standing or plying for hire, and includes any carriage let for hire by a coachmaker or other person whose trade or business it is to sell carriages or to let them on hire, provided that it is not let for a period of three months or more. The term includes an ordinary omnibus running between a fixed route, and it has also been held to include a farmer's cart used for husbandry, but not having his name thereon, though he had intended to paint it up.

For every other carriage having four or more wheels and drawn or adapted to be drawn by one horse only 1 1 0

Ditto with less than four wheels. 0 15 0

For every other carriage having four or more wheels, and drawn or adapted to be drawn by two or more horses, or drawn or propelled by mechanical power 2 2 0

The term "carriage," for the purposes of excise, means and includes any carriage (except a hackney carriage) drawn by a horse or horses, or drawn or propelled upon a road or tramway, or elsewhere than upon a railway, by steam, electricity, or any other mechanical power. It does not, however, include a waggon, cart, or other like vehicle used solely for the conveyance of any goods or burden in the course of trade or husbandry; but to be exempt from duty there must be on the vehicle the christian name and surname and place of abode or place of business of the person, or the name or style and principal or only place of business of the company or firm keeping the same, visibly and legibly painted in letters of not less than one inch in length. Whoever lets a carriage for hire for less than one year is the person liable to the duty for keeping it; the hirer is so liable when the letting is for a year or more. Farm waggons or carts duly inscribed with name and address may be used on Sunday, Christmas Day, Good Friday, or any day of public feast or thanksgiving to take the owner or his family to or from a place of divine worship, and such use does not involve a liability to duty. The following vehicles are also exempt

from the duty: Carriages kept but not used at any time within the year; four-wheel brakes, without any body, used only for breaking-in horses; hearses, duly inscribed, not used as or forming part of mourning carriages; farm and trade carts which may gratuitously carry passengers, who are not the owner or his family, on holidays and special occasions; rural post-carts which do not convey passengers; and carts used for carrying mails under contract with the Post-Office, and so built as to be unable to carry passengers. Should any one begin to keep a carriage or a hackney carriage on or after 1st October, he need only take out a licence which expires on the 31st December upon payment of half the amount otherwise payable.

CHICORY, per cwt., raw or kiln-dried £0 12 1

And so on in proportion for any greater or less quantity than a hundredweight. Any person, other than a roaster, dryer, or dealer, having duly made entry of his premises with the excise, who is found with more than 14 lbs. of such chicory upon his premises, is liable to a penalty of £100.

CHIMNEY SWEEP, who employs an assistant 0 2 6

CIDER AND PERRY (*England*), annual licence, retailers of . . . 1 5 0

See also PUBLICANS.

COFFEE SUBSTITUTES and mixtures, per ¼ lb. 0 0 0½

This duty is charged upon any article prepared or manufactured as an imitation of, or to resemble, or serve as a substitute for, coffee or chicory. The duty, which is denoted by adhesive labels, is also charged upon any mixture of such article with coffee or chicory sold or kept for sale.

COMMISSIONS :—

Officers, Army or Royal Marines 1 10 0

Officers, Royal Navy 0 5 0

Of Lunacy 0 5 0

DOGS, *Great Britain*, annually, six months of age and over . . . 0 7 6

GAME LICENCES, *U.K.*, may be taken out after July 31st, but before Nov. 1st, to expire on the following July 31st, for . . . 3 0 0

But if taken out after July 31st, to expire on the following Oct. 31st 2 0 0

Or after Oct. 31st, to expire on the following July 31st . . 2 0 0

Or for any continuous period of 14 days 1 0 0

GAMEKEEPERS are required in *Great Britain* to take out an annual licence, expiring on July 31st 2 0 0

In *Ireland* their licences are at the same rate as Game licences.

GAME DEALERS, *U.K.*, annually, to expire July 1st 2 0 0

The term "game" includes deer, woodcock, snipe, quail, landrail, and rabbits, in addition to hares, partridge, pheasants, &c., and the licence is generally necessary for any one to lawfully kill or

take game without reference to the manner in which it is killed or taken. If the game is shot with a gun, a licence for the gun is also necessary. But no game licence is required in order to take woodcock or snipe in springs or nets. The owner of a warren or enclosed ground may take rabbits without a licence, and so may the tenant of land, or other persons under his direction or permission, freely take rabbits and hares. Nor is a licence required in order to hunt deer with hounds, or kill them in enclosed lands with the permission of the owner or occupier; or to course hares with greyhounds, or hunt them with beagles or greyhounds. Nor by persons without guns who are merely assisting duly licensed sportsmen; nor by those who may kill and take under the GROUND GAME ACT, 1880 (*q.v.*). A gamekeeper's licence extends only to the lands over which his master has a right to shoot, and it does not confer upon the gamekeeper a liberty to deal in game. A licensed sportsman must be careful not to commit any trespass in pursuit of game, for should he be convicted thereof, both his game and gun licences will be forfeited. As to licences for GAME DEALERS, see the article under that heading.

GLUCOSE, per cwt., *solid*	£0	2	9
„ „ *liquid*	0	2	0
GLUCOSE OR SACCHARINE, annual, to manufacture	1	0	0
GUNS, *U.K.*, annual, expiring July 31st	0	10	0

The term "Gun," for the purposes of excise, includes a firearm of every description, even a small toy pocket-pistol, and also any air-gun, or any other kind of gun from which any shot, bullet, or other missile can be discharged. Frequenters of shooting galleries should note that the Act by which this licence is made necessary applies to guns used in those places, and also to the attendants and every one who fires a shot in a gallery. The licence is required by every one who uses or carries a gun, otherwise than in a dwelling-house or its curtilage. The latter term includes only the outbuildings, offices, yard, and enclosed ground adjoining the house. Should a gun be carried in parts by two or more persons in company, each person is deemed to carry the gun. The excise authorities make it a rule not to prosecute an unlicensed person who, by the authority of the holder of a game licence, merely uses a gun for the purpose of shooting rooks, sparrows, or rabbits for the protection of crops. The penalty is £10; but the following persons are *exempt* from the need for a licence: (1) Any person in the military, naval, or volunteer service, or in the police force in the performance of duty, or in target practice; (2) any person carrying a gun belonging to and for the use of a person having a game or gun licence, provided he gives his own and his employer's true names and addresses upon the request of an Inland Revenue officer, a police constable, or the owner or occupier of the land on which the gun is being used or carried; (3) any person having a licence or certificate to kill game; (4) the occupier of any lands using a gun for the purpose of "scaring," not killing, birds, or killing vermin on those lands, or on any lands by the order of the occupier who has a game or gun licence; (5) any gunsmith or his servant carrying a gun in the ordinary course of his business, or by way of testing or regulating its strength or quality in a place

specially set apart for the purpose; (6) any person carrying a gun in the ordinary course of his business as a common carrier.

HAWKERS, *U.K.*, annual 2 0 0

HOUSE AGENTS, *U.K.*, annual 2 0 0

This licence expires on the 5th July in every year, and to carry on business as a house agent without having a licence for the time being in force is to become subject to a penalty of £20. Solicitors, landed estate agents, licensed appraisers, and auctioneers are exempt; and a licensed house agent is entitled to act as an appraiser without further licence. For the purposes of excise, a house agent is a person who, as agent for any other person, shall, for or in expectation of fee, gain, or reward of any kind, advertise for sale or for letting any *furnished* house or part of any furnished house; or who shall by any public notice or advertisement, or by any inscription in or upon any house, shop, or place used or occupied by him, or by any other ways or means, hold himself out to the public as an agent for selling or letting furnished houses, and who shall let or sell, or agree to let or sell, or make or offer or receive any proposal, or in any way negotiate for the selling or letting of any furnished house or part of any furnished house. But no person is deemed to be such a house agent only because he lets or agrees, or offers to let or in any way negotiates for the letting of any house not exceeding the annual rent or value of £25. A storey or flat rated and let as a separate tenement is a house for the purposes of the foregoing definition.

INEBRIATES' RETREATS: 10s. for each patient, but not less than for ten £5 0 0

INVERT SUGAR MANUFACTURERS 1 0 0

LUNACY HOUSE, LICENCE FOR 0 10 0

MALE SERVANTS, *Great Britain*, annual, for each 0 15 0

This term means and includes any male servant employed either wholly or partially in any of the following capacities:—Maître d'hotel, house steward, master of the horse, groom of the chambers, valet de chambre, butler, under-butler, clerk of the kitchen, confectioner, cook, house porter, footman, page, waiter, coachman, groom, postillion, stable-boy or helper in the stables, gardener, under-gardener, parkkeeper, gamekeeper, under-gamekeeper, huntsman, and whipper-in, or in any capacity involving the duties of any of the above descriptions of servants, by whatever style the person acting in such capacity may be called. The person who furnishes a male servant on hire is deemed to be the employer of the servant and liable to duty. A person will not be a male servant within the meaning of the foregoing definition who is *bonâ fide* employed in some other capacity, and is only occasionally or partially employed in any of the above duties. Nor will he be a male servant subject to duty who is *bonâ fide* engaged to serve his employer for a portion of a day only in any of the above duties, and who does not live in the house of his employer. A mere outdoor labourer who occasionally acts in any of the foregoing duties would not be a male servant subject to duty. *Exemptions.*—It is not necessary for licences to be taken out in the following cases, viz.: By any officer in the army or navy for any servant who is a soldier or sailor, and is employed by the officer in accordance with the regulations of the service; By any licensed retailer of exciseable

liquors or licensed keeper of a refreshment house for any servant employed by him solely for the purposes of his business, such servant being the only male servant employed by him; By any person who, as a livery stable keeper or like tradesman, has duly made entry of his premises for any servant employed by him thereon in the course of his trade, other than a servant employed to drive a horse and carriage let on hire for more than twenty-eight days; By any person duly licensed by proper authority to keep or use any public stage or hackney carriage, for any servant necessarily employed by him to drive such stage or hackney carriage, or in its care.

Persons keeping servants to make declarations.—Every person employing any male servant, or keeping any carriage, or wearing or using any armorial bearings, must fill up and sign a declaration in the prescribed form wherein is to be stated the following particulars, viz.: The number of male servants employed by him, and in what capacity; The number of carriages kept by him, and the number of wheels of each carriage, and also whether any carriage having four or more wheels weighs less than 4 cwt.; Whether he wears or uses armorial bearings, and if so, whether they are painted, marked, or affixed on any carriage he may keep; The number of male servants or carriages hired by him, with the name and address of the person from whom he has hired them. This declaration must be delivered, and any duties payable duly paid to the excise authorities before the expiration of the month of January in each year, or before the expiration of 21 days from the day of his commencing to employ any servant, or keep or use any carriage, or to wear or use any armorial bearings. The penalty for not making a declaration, or for making a false one, is £20; for not taking out the necessary licence, £20 also.

MEDICINES, PATENT, *Great Britain*:—			
Not exceeding 1s.	£0	0	1½
„ 2s. 6d.	0	0	3
„ 4s.	0	0	6
„ 10s.	0	1	0
„ £1	0	2	0
„ £1, 10s.	0	3	0
„ £2, 10s.	0	10	0
Exceeding £2, 10s.	1	0	0
MEDICINE (PATENT) DEALERS (or Makers), *Great Britain*. Annual for each place of business	0	5	0
METHYLATED SPIRITS, Makers	10	10	0
„ „ Dealers	0	10	0
MONEY LENDERS, REGISTRATION	1	0	0
MOTOR CARS:—			
Motor bicycles or tricycles	1	0	0
Other motor cars not exceeding 6½ h.p.	2	2	0
Exceeding 6½ h.p. not exceeding 12 h.p.	3	3	0
„ 12 „ 16 „	4	4	0
„ 16 „ 26 „	6	6	0
„ 26 „ 33 „	8	8	0
„ 33 „ 40 „	10	10	0
„ 40 „ 60 „	21	0	0
„ 60	42	0	0

N.B. Medical practitioners, in certain circumstances, are entitled to an allowance.

OCCASIONAL LICENCES, and PASSENGER VESSELS on which are sold tobacco or exciseable liquor, *see* Appendix Vol. IV. (LIQUOR LICENCES).			
PAWNBROKERS, *U.K.*, annual	£7	10	0
But if dealing in plate, without regard to weight, additional	5	15	0
PLATE DEALERS, *U.K.*, annual, expiring 5th July without regard to the date when issued, and in respect of each place of business:—			
Gold above 2 dwts. and under 2 oz. in weight, and *Silver* above 5 dwts. and under 30 oz. in weight	2	6	0
Gold above 2 oz. and *Silver* above 30 oz.	5	15	0

This licence must be taken out by all persons who trade in or sell articles composed wholly or in part of gold or silver. The word "gold" would include anything made partly of gold and sold under the description of gold. Pedlars, hawkers, refiners, and pawnbrokers are liable to the duty, but *bonâ fide* travellers for licensed dealers are exempt; and so also (by the custom of the excise authorities) are auctioneers in respect of plate sold by them by auction; and so also are dealers and pawnbrokers in gold or silver lace, wire thread or fringe; and so also are makers of watch cases in respect of sales of their own manufactures. A case important to those interested in watch clubs is that of *Killick* v. *Graham*. A watchmaker in London, licensed to deal in plate at his place of business in London, was proprietor of a "watch club" in a provincial town. The secretary of the club, a clerk in the town, obtained members from his fellow-employees, receiving from each member a weekly subscription, which he forwarded to the watchmaker. The members balloted amongst themselves for the right to receive a watch, and a successful member would receive one from the maker through the hands of the secretary. The latter, who was not licensed, was paid by the watchmaker a commission upon the amount collected by him. It was held that the secretary was a person soliciting, taking, or receiving orders for an exciseable article without having in force a proper excise licence, and that he did not come within the proviso in favour of *bonâ fide* travellers. The penalty he incurred was £50, the same as that for dealing in plate without a licence.

Refiners of gold or silver, *U.K.*, annual, in respect of each place of business	5	15	0
PLAYING CARDS, Makers, who sell	1	0	0
„ per pack	0	0	3
PUBLICANS, *see* Appendix Vol. IV., under heading LIQUOR LICENCES.			
RAILWAYS, per £100 passenger receipts:—			
Urban traffic	2	0	0
Other „	5	0	0
REFRESHMENT HOUSES, *England and Ireland*, annual:—			
If the rent of the premises is under £30	0	10	6
Rent £30 or above	1	1	0
REFINERS of gold and silver	5	15	0
SACCHARINE MANUFACTURERS	1	0	0
„ per oz.	0	1	3
SPIRITS, *see* PUBLICANS.			
STILLS OR RETORTS, *U.K.*, annual, being kept by chemists and others	0	10	0
SWEETS, *see* PUBLICANS.			
TOBACCO MANUFACTURERS, *see* article hereon.			
VINEGAR MAKERS, *U.K.*, annual	1	0	0
WINE, *see* PUBLICANS.			

EXCURSION TRAINS are those trains for the convenience of passengers which are run for the special convenience of the public between special places, on special occasions, and at special fares. The rights and liabilities of the railway company and the passengers are, apart from special contract, the same as in the case of ordinary passenger trains. In the latter class of trains a railway company is bound to carry a certain amount of passengers' luggage, but it has been held that the obligation may be suspended in respect of excursion trains. Should a passenger carry luggage on an excursion train in excess of the amount allowed by the special conditions of the excursion, he will be liable to the company in respect thereof for a sum equal to the amount which would have been payable if the luggage had been carried as goods. And the company has a lien upon the luggage for the amount so payable. An excursion train is not a passenger train within the meaning of a contract which provides that all passenger trains shall stop at a particular station.

EX DRAWING.—This is a phrase occasionally appended to the quotation of prices of stocks in the official list. Where the quotation appears without any modification it means that the purchaser at the price quoted acquires with his purchase a right to all the accruing advantages incidental to the stock purchased. He would therefore be entitled to any accruing dividend, for example; and in like manner in the case of a stock which is liable to redemption by drawings [*see* AMORTISATION], he would be entitled to receive the nominal value of the security he has purchased in case it were redeemed at the next periodical drawing. This would be a considerable advantage if the stock had been purchased at the price of say £90—his profit on £100 stock would be £10. It is accordingly not unusual to quote the prices of foreign government or other stocks, which are subject to redemption by periodical drawings, with the phrase "ex drawing" appended thereto. By this means the seller retains a right to the advantage, if any, resulting from the expected drawing, the purchaser being excluded therefrom.

EXECUTION.—If a judgment or order of a court is not suspended or reversed, the next step is the *execution* of that judgment, or putting the sentence of the law in force. This is performed in different manners, according to the nature of the action upon which it is founded, and of the judgment which is had or recovered. It will be convenient to here treat this subject first from the point of view of a judgment in the High Court, and then from that of a judgment of a County Court. Generally speaking the principles and practice of execution are the same in both of these courts; though certain modes available in the High Court are not available in the County Court, and in the latter court the technical terms are often not the same as those used in High Court proceedings.

In the High Court.—Where a creditor has obtained a judgment for the payment of money or costs, he may proceed to execution by issuing a writ of *fieri facias*, or one of *elegit*, or of sequestration. Should these proceedings prove ineffective, he may obtain an attachment of any debts due to the judgment debtor; or a charging order, distringas, or stop order; or the appointment of a receiver; or the committal of the debtor to prison. Of the foregoing proceedings, those relating to SEQUESTRATION, ATTACHMENT OF DEBTS, CHARGING ORDER, DISTRINGAS, and STOP

ORDER, are dealt with in the articles under those respective headings; whilst the proceedings relating to the appointment of a receiver will be found in the article on EQUITABLE EXECUTION, and those incidental to committal in the article on the DEBTORS ACT. There therefore remains to be here particularly noticed the proceeding by way *fieri facias*, it being sufficient to say as to the rest—that *elegit* is an execution upon the debtor's lands only; sequestration, upon the rents and profits of his real and personal estate, or if he is the incumbent of an ecclesiastical benefice, upon the income thereof. But if the judgment or order is merely for delivery of possession of land, the only modes are writ of possession, sequestration, and attachment; if for delivery of property other than money or land, the modes are writ of delivery, sequestration, and attachment; and if for requiring any one to do or abstain from doing some act other than the payment of money, the appropriate modes of execution are attachment and committal.

Fieri facias.—This is the name by which is generally known the writ of execution against the goods, chattels, monies, and securities of the judgment debtor. It is so called because in the older days these Latin words occupied a prominent position therein; in the everyday work of a solicitor's office it is now more generally known as a *fi-fa*. In order to issue this writ of execution the judgment creditor must produce, at the office of the court, an original or office copy of the judgment or order, fill up the printed forms supplied for the purpose, and pay the sum of 5s. In the case of a judgment or order for payment of money, the execution may be issued forthwith, without notice to the debtor, or service upon him of the judgment or order. It may be issued for the full amount of debt and costs, and also for interest thereon at the rate of 4 per cent. from the date of judgment. The writ of *fi-fa* will be sealed by the officer of the court and returned to the judgment creditor, who must then hand it to the sheriff through his under-sheriff, for him to levy upon the debtor's goods. The sheriff must then proceed with the levy, and seize such of the debtor's goods as he can find within his "bailiwick," or district. There is a sheriff appointed for each county and certain cities, and if the debtor has goods in different "bailiwicks," a *fi-fa* may be issued to each appropriate sheriff; but care must be exercised in doing this, lest the several writs are too comprehensive in their scope, and too much of the debtor's property is thereby seized. If the debtor should not pay, notwithstanding the seizure, the sheriff must sell the goods. If the debtor has no goods upon which the sheriff can levy, or his goods have been sold by the sheriff, the latter should make a return to the court of his proceedings, accounting for any monies he may have realised; and after deducting his own costs and expenses he must pay the judgment creditor thereout the amount of his claim, so far as the funds in his hands will permit; any balance remaining will belong to the debtor. The sheriff is expected to make this return immediately he has fully executed the writ, but as a matter of practice he rarely does so, contenting himself with merely paying the creditor direct; but both the debtor and the person issuing the writ are equally entitled to demand the return. Should the sheriff fail to make the return after due application therefor, he may be committed to prison. But in the case of a judgment for a sum over £20, the sheriff is required to hold in his hands the proceeds of the levy until the expiration of fourteen days; this is a provision against the bankruptcy of the debtor within that time. The net effect of an execu-

tion is to vest the property in the proceeds thereof in the judgment creditor subject to the sheriff's claim for costs; and the creditor is entitled to sue the sheriff therefor as for a debt due.

Where the judgment or order is for payment of a sum of money and costs, the judgment creditor is entitled to issue his writ of execution for the debt alone, and he may proceed with another writ, but not within eight days after the first writ, for the recovery of the costs. A writ of execution, if unexecuted, remains in force for only one year from the date of its issue, unless it is renewed within the expiration of that year by leave of the court. It is considered to be "unexecuted" if only a portion of the amount for which it has been issued has been realised by the levy; a further levy for the balance may be made under the same writ. As between the original parties to the judgment or order, the execution may issue at any time within six years from the recovery of the judgment or the date of the order. But in the following cases the leave of a judge must be obtained before issue: (*a*) where six years have elapsed since the judgment or order, or any change has taken place by death or otherwise in the parties entitled or liable to execution; (*b*) where a husband is entitled or liable to execution upon a judgment or order for or against a wife; (*c*) where a party is entitled to execution upon a judgment of assets *in futuro*; as where the judgment is against an executor or administrator in respect of any assets of the deceased which may eventually fall into the estate; where a party is entitled to execution against any of the shareholders of a joint-stock company upon a judgment recorded against the company, or against a public officer or other person representing the company; (*d*) against a person not a party to the action in which the judgment was obtained; (*e*) on a judgment against a firm, against any person as being a member of the firm who has not appeared or been adjudged to be a partner.

If two writs of *fi-fa* against the same person are delivered to the sheriff, he must first execute the one which was first delivered to him, and this is so even if both the writs were delivered on the same day. Under such circumstances he must apply the proceeds of any sale under the writs in satisfaction of that one which was first delivered to him; for when the sheriff seizes the goods, they are legally in his custody under all the writs which he has at the time in his possession, and his sale is likewise under all the writs. The result of delivering to the sheriff a writ of *fi-fa* for him to execute, is to thereby, from that moment, *bind* all the goods and chattels of the debtor. The *binding* of the goods, under the old law, operated so that if the debtor made an assignment of the goods, even for a valuable consideration, unless in market overt, the sheriff could still take them in execution. It should be noted, however, that the property in the goods was not, and is not now, altered by the binding; such an alteration occurs only upon the execution and sale. At the present day the law hereon is contained in the Sale of Goods Act, which provides, section 26, that "a writ of *fieri facias* or other writ of execution against goods shall bind the property in the goods of the execution debtor as from the time when the writ is delivered to the sheriff to be executed; and, for the better manifestation of such time, it shall be the duty of the sheriff, without fee, upon the receipt of any such writ to indorse upon the back thereof the hour, day, month, and year when he received the same. Provided that *no such writ shall prejudice the title to such goods acquired by*

any person in good faith and for valuable consideration, unless such person had, at the time when he acquired his title, notice that such writ, or any other writ by virtue of which the goods of the execution debtor might be seized or attached had been delivered to and remained unexecuted in the hands of the sheriff."

Seizure and sale.—The sheriff's officer enters upon the premises in which the debtor's goods are, and leaves an assistant in possession of them. If the goods are in a dwelling-house the entry must be without force, for "every man's house is his castle"; but if in a building of a different character, such as a factory or stable, the entry may be effected by a breaking-in. Having entered, the officer seizes the goods, or so much thereof as is reasonably adequate to satisfy the judgment, and thenceforth they are in the custody of the law, and the sheriff is in a position to maintain an action in respect of any trespass to them. He should remove them to a place of safe custody until sold, but he is not bound to do this if they can safely remain in his possession upon the premises in which they were found. But if the debtor does not pay the amount for which the execution has been levied, the sheriff is bound to sell the goods, and to do so for ready money and immediate delivery. He cannot hand the goods over to the creditor in satisfaction of his debt, but he may sell them to the creditor or to any person in trust for the latter at their real value. Nor can he keep the goods himself and pay the creditor his debt. If, however, only a very inadequate price is offered for the goods, the sheriff should decline to sell them, and should make a return that they remain on his hands for lack of buyers; the creditor can thereupon, if he thinks fit, serve upon the sheriff a writ *venditioni exponas*, under which the sheriff has no option but to sell them at the best price he can obtain. Where the sheriff sells the goods of a debtor under an execution for a sum exceeding £20 (including legal incidental expenses), the sale must, unless the court from which the process issued otherwise orders, be made by public auction, and not by bill of sale or private contract; and it must also be publicly advertised by the sheriff on and during the three days immediately preceding the sale. Where any goods of a debtor are taken in execution, and the sheriff has notice of another execution or other executions, the court will not consider an application for leave to sell privately until notice has been given to the other execution creditor or creditors, who may appear before the court and be heard upon the application.

The sheriff must not wilfully delay the sale for an unreasonable time, so as to injure the debtor, for in that event the latter would have an action against him; nor may he, after selling enough to satisfy the execution, proceed to sell more of the debtor's goods. As will be seen in other articles, the sheriff cannot proceed to sell the goods unless and until he has paid at most one year's rent to the landlord, or such other less amount of arrears as may be actually payable; this is where the premises are let otherwise than at a weekly rent, in which latter case the landlord is only entitled, as against the creditor, to four weeks' rent in the event of an execution being levied. It is usual in such circumstances for the sheriff to seize sufficient goods to satisfy both the landlord and the creditor, and to make the payment to each of them. But if the sheriff has notice, *or knows*, of the arrears of rent being due, and the creditor does not choose to pay it, the sheriff should withdraw without selling; for should he remove any of the goods without having paid the rent due, he will be liable to the landlord. But there must be an actual

removal to so render the sheriff liable; consequently he may sell them upon a bill of sale without having previously paid the rent. Though the landlord has this right to payment of certain rent, he cannot distrain upon the goods therefor whilst the sheriff is in possession, for the goods are then in the custody of the law. The sheriff must also pay the King's taxes to the extent of one year's arrears.

What property may be seized.—No other goods than those of the debtor may be seized in execution by the sheriff, and should the latter receive claims from third parties to the goods seized, he should withdraw upon an authority from the creditor, or proceed by way of INTERPLEADER. By the general rule of law the sheriff may seize and sell all the personal goods and chattels belonging to the debtor that he can find, and which can be sold, with the exception of wearing apparel actually in use, and perhaps goods in the personal possession of the defendant. But upon this general rule there have been engrafted certain exceptions. Omitting special reference to the exception in favour of goods distrained upon for rent, and of ambassadors' goods, and to those exceptions created in respect of agricultural produce and railway rolling stock and plant, attention should be directed to the exception created by 8 & 9 Vict. c. 127. Section 8 of this statute provides "that from and after the passing of this Act the wearing apparel and bedding of any judgment debtor or his family, and the tools and implements of his trade, the value of such apparel, bedding, tools, and implements not exceeding in the whole the value of £5, shall not be liable to seizure under any execution or order of any court against his goods and chattels." The foregoing are the sole exceptions, but it should be carefully noticed that the personal property available for seizure is only that to which the debtor has a legal, as distinguished from an equitable, title. To make the latter available, it is necessary to proceed by way of equitable execution; or in the case of debts due to the debtor, by way of attachment or garnishee.

By the Judgments Act of 1838, it is specially provided that the sheriff "may and shall seize and take any money or bank-notes . . . , and any cheques, bills of exchange, promissory notes, bonds, specialties, or other securities for money" belonging to the debtor; and shall pay the creditor out of the money or bank-notes; and "shall hold any such cheques, bills of exchange, promissory notes, bonds, specialties, or other securities for money, as a security or securities for the amount" levied; and shall sue for payment thereof, and out of the money so recovered pay the creditor. But the sheriff is not bound to sue on the above-mentioned securities unless the creditor indemnifies him by bond, with two sufficient sureties, against the costs and expenses of so suing. A title-deed is not in itself available for seizure; it must therefore, in order to be so available, be of such a nature as to be a security for money in the sense that it is an unconditional covenant or agreement to pay money, upon which, apart from any other instrument, the debtor could himself sue. Money in the debtor's pocket cannot be seized. The sheriff may sell a lease or term for years belonging to the debtor, and execute an assignment of it to the purchaser; he may also sell any fixtures upon the premises which may be removed by the tenant; but he cannot sell landlord's fixtures, or those which are affixed to the freehold, not even if the debtor is himself the freeholder.

Against partners.—Where a judgment or order is against *a firm*,

execution may issue:—(*a*) Against any property of the partnership within the jurisdiction; (*b*) against any person who has appeared in his own name, or who has admitted on the pleadings that he is, or who has been adjudged to be, a partner; (*c*) against any person who has been individually served, as a partner, with the writ of summons, and has failed to appear. If the party who has obtained the judgment or order claims to be entitled to issue execution against any other person as being a member of the firm, he may apply to the court for leave so to do; and the court may give leave if the liability is not disputed, or if the liability is disputed it may order that the liability of the person be tried and determined in any manner in which any issue or question in an action may be tried and determined. But, except as against any property of the partnership, a judgment against a firm does not render liable, release, or otherwise affect any member thereof who was out of the jurisdiction when the writ was issued, and who has not appeared to the writ unless he has been made a party to the action, or been served within the jurisdiction after the writ was issued. It should be remembered that for an execution to issue against the property of the partnership, *the judgment must be against the firm in the firm's name;* and that, under (*b*) above, the private property of partners is liable to execution in respect of partnership debts, in the case of appearance, admission, or judgment as therein mentioned, but care should be taken, if such an execution is aimed at, that the partners are individually named in the writ and that they are each personally served. A person who trades alone in the name of a firm is not liable to execution upon his private property unless he has been personally served. A married woman may be liable to personal execution if she is a member of a partnership firm; and so also a partner who has, to the creditor's knowledge, left the firm before the action was brought—but he must have been personally served with the writ. As to execution against partnership property in a case where judgment has been obtained against one of the partners in his private capacity and on a separate liability, reference should be made to the articles on CHARGING ORDER; EQUITABLE EXECUTION; PARTNERSHIP; and RECEIVER.

Against corporations.—A writ of *fi-fa* may be issued against a corporation in the same way, without leave, as one may be issued against an individual. And it is further provided by the Rules of Court that any judgment or order against a corporation wilfully disobeyed may, by leave of the court, be enforced by sequestration against the corporate property, or by attachment against the directors or other officers thereof, or by writ of sequestration against their property. But an execution cannot be levied upon the rolling-stock of a railway company; nor can it be levied upon the goods of a registered company after a winding-up order has been made.

Against married women.—An execution against a married woman can only be issued against her separate estate not restrained from anticipation; but after her husband is dead her separate estate is gone.

Bankruptcy.—By the Bankruptcy Act, 1890, a debtor commits an act of bankruptcy if execution against him has been levied by seizure of his goods under process in an action in any court or in any civil proceeding in the High Court, and the goods have been either sold or held by the sheriff for twenty-one days. There is a proviso for an extension of time in the event of an interpleader [*see* ACT OF BANKRUPTCY]. By the Act of 1883 it is

provided that an execution levied by seizure and sale on the goods of a debtor is not invalid by reason only of its being an act of bankruptcy; and any person who purchases goods in good faith under a sale by the sheriff shall in all cases acquire a good title to them against the trustee in bankruptcy. And by the Act of 1890 it is provided:—

(1) Where any goods of a debtor are taken in execution, and before the sale thereof or the completion of the execution by the receipt or recovery of the full amount of the levy, notice is served on the sheriff that *a receiving order* has been made against the debtor, the sheriff shall, on request, deliver the goods and any money seized or received, in part satisfaction of the execution, to the official receiver; but the costs of the execution shall be a first charge on the goods or money so delivered, and the official receiver or trustee may sell the goods, or an adequate part thereof, for the purpose of satisfying the charge.

(2) Where, under an execution in respect of a judgment for *a sum exceeding* £20, the goods of a debtor are sold, or money is paid in order to avoid sale, the sheriff shall deduct his costs of the execution from the proceeds of sale or money paid, and *retain the balance for fourteen days;* and if within that time notice is served on him of a bankruptcy petition having been presented against or by the debtor, and a receiving order is made against the debtor thereon, or on any other petition of which the sheriff has notice, the sheriff shall pay the balance to the official receiver, or, as the case may be, to the trustee, who shall be entitled to retain the same as against the execution creditor.

In the county courts, an execution is levied by an officer of the court called the high bailiff. An ordinary execution, which answers to the writ of *fieri facias* in the High Court, for the enforcement of a judgment or order for the payment of money may be issued by the party entitled to the benefit of the judgment or order upon application to the court, and production of the plaint-note or summons issued in the action. It is not a writ which is thus issued, but a warrant; and this warrant continues in force for twelve months from its date, and no longer. Except by leave of the judge or registrar, no warrant will be issued unless some payment into court has been made by the debtor under the judgment within twenty-four months from the date of the latter; but no notice need be given to the debtor of any application for that leave. Where a defendant has made *default in payment of the whole amount* awarded by the judgment, *or* where the judgment was by payment of instalments *of an instalment* thereof, the warrant may issue without leave, and may be for the whole amount of the balance.

Partners.—Where a judgment is against partners in the name of the firm, execution may issue in the following manner: (1) Against any property of the partnership; (2) against any property of any person who has admitted that he is, or who has been adjudged to be, a partner; (3) against any person who has been served as a partner with a copy of the summons and has failed to attend upon the trial. If the party who has obtained judgment claims to be entitled to issue execution against any other person as being a member of the firm, he may, after giving to that person two clear days' notice of his intention, apply to the registrar for leave to do so. If the liability is then disputed the registrar will refuse to grant leave, and will refer the matter to the judge for his decision as to the liability.

Where any *change has taken place* after judgment, by death, assignment, or otherwise, *in the parties* entitled to take proceedings to enforce the judg-

ment or order, or in the parties liable to the proceedings, it is necessary to obtain leave in order to issue the execution. And so also, where a husband is entitled or liable to proceedings upon a judgment or order for or against a wife; and where a party is entitled to execution against any of the shareholders of a joint-stock company upon a judgment recorded against the company, or against a public officer or other person representing the company.

Seizure.—By virtue of a warrant of execution there may be seized and taken any goods and chattels of the judgment debtor (excepting his wearing apparel and bedding or that of his family, and the tools and implements of his trade, to the value of £5, which is the extent protected from seizure), and there may be also seized and taken any of his money or bank-notes, and any cheques, bills of exchange, promissory notes, bonds, specialties, or securities for money. The high bailiff must hold any cheques, bills of exchange, promissory notes, bonds, specialties, or other securities for money so seized, as a security for the amount directed to be levied by the execution, or so much thereof as has not been otherwise levied or raised, for the benefit of the creditor. The latter may sue in the name of the debtor, or in the name of any person in whose name the debtor himself might have sued, for the recovery of the sum or sums secured or made payable thereby, when the time for payment thereof has arrived.

Execution may be suspended in certain cases.—By section 153 of the County Courts Act, 1888, it is provided as follows: If it shall at any time appear to the satisfaction of the judge that the defendant in any action or matter is unable, *from sickness* or other sufficient cause, to pay and discharge the debt or damages recovered against him, or any instalment thereof, it shall be lawful for the judge, in his discretion, to suspend or stay any judgment, order, or execution given, made, or issued in such action or matter, for such time and on such terms as the judge shall think fit, and so from time to time until it shall appear that such cause of inability has ceased, *or to order* the discharge of any debtor confined in prison by order of a court, who, on account of sickness, insanity, or other sufficient cause, ought, in the opinion of the judge, to be discharged.

Sale.—No sale can be made until the fifth day of the bailiff's holding possession of the goods under an execution, unless the goods are of a perishable nature, or are sold at the request of the party before the expiration of the five days. Unless the judge otherwise directs, the costs of the warrant, whether the execution is productive or not, are payable by the defendant. But no possession fee is payable where an execution is paid out at the time of levy; though if the bailiff necessarily remains in possession more than half-an-hour, and the execution is paid out on the day of levy, the possession fee for that day will be charged. *See* also BAILIFF; SHERIFF; INTERPLEADER.

EXECUTORS AND ADMINISTRATORS.—An executor is one whom another person has appointed by his will to execute its directions, wind up his estate, and generally represent him after his decease. As such he is known as the "personal" representative of the deceased; not so much because he represents the deceased's person, as because all the deceased's personal estate is vested in him, and it is through him only that the legatees or others entitled to a share in the personal estate of the deceased can obtain possession thereof. Until the Land Transfer Act of 1897, it was the personal

estate alone of the deceased which was thus vested in the executor, wherefore the latter's designation of personal representative was in full accord with the facts. By that Act, however, it was provided that the real estate of the deceased should also vest in his personal representative, and that a heir-at-law, devisee, or other person who became entitled thereto (otherwise than by survivorship), must acquire his title through the deceased's personal representative. The executor was thus established as the "real" representative of the deceased in addition to being his personal representative. This additional interest of the executor in the estate of the deceased is accompanied by a corresponding additional interest in an administrator, or one who, not being appointed executor by a will, is appointed by the court to administer a deceased's estate. The duties and rights of executors and administrators are generally the same.

Appointment of executor.—*Who may be appointed.*—It may be said, as a general rule, that every person may be an executor, except such as are expressly forbidden. And not even to persons is the office of executor restricted, for it is possible for a corporation or joint-stock company to fill the office. This being the law, there exist a number of companies, representing very considerable capital, which make the undertaking of executorships and trusts a primary feature of the business they carry on. Their remuneration is fixed at a certain commission agreed with the person who is making his will, and thereby the testator, while being relieved from the necessity of troubling his friends, is afforded an opportunity to appoint as his executor a company of high financial standing and specialised business capacity. A married woman may be appointed executor, and so may an infant, however young he may be. But if the infant is sole executor his appointment will not be ratified by the court, so that he cannot legally act, until he has attained the age of twenty-one years; in the meanwhile it is necessary for some other person who is *sui juris* to take out letters of administration *durante minore ætate*, in order that the deceased's estate may be properly wound up. But if the infant is one of several executors this rule does not apply, for the others being of full age are capable of executing the will. Idiots and lunatics cannot be executors. The official trustee, a public officer, may now be appointed.

The mode of appointment.—A testator should be careful to expressly appoint an executor in his will. It is usual to make the appointment at the beginning of the will, though it is often made at the end and sometimes elsewhere in the will. No express words of appointment are requisite, but it is more convenient to make the appointment expressly in such words as the following: "I appoint C. D. to be the executor of this my will." Though for accuracy's sake it is important that the appointment should be express, yet it will be sufficient if in the absence thereof an appointment of a definite person may be gathered from the general wording of the will. Such an appointment would be a constructive one, and the person appointed would be called an "executor according to the tenor." For a testator to declare in his will that C. D. shall have his goods after his death to pay his debts and otherwise to dispose at his pleasure; or that all his goods are committed to the administration of C. D.; or that his goods are committed to the disposition of C. D.; or that C. D. is to pay debts, funeral charges, and the expenses of proving the will, would be to appoint C. D. his executor. The testator may not only appoint a number of executors who would act as one

person in conjunction one with the other, but he may appoint what are known as substituted executors. Such an appointment as the latter would occur, for example, where a testator appoints his son sole executor, but in the event of his going abroad, or being or remaining abroad for upwards of a certain time, then he appoints C. D. his executor. If the son, after the death of the testator, goes abroad and there remains, the court would grant probate to C. D., but reserve power to the son to prove the will. A case of substituted appointment which frequently arises is where the testator makes his wife executrix, but if she will not or cannot be executor, then he makes his son executor. The substitution could proceed further by the testator declaring that if his son will not or cannot be executor, then he makes his brother, and so on.

Qualification of appointment.—As a general rule a testator appoints his executor absolutely and without any restriction and limitation as to his powers. But in some cases it may be necessary or more convenient to qualify the appointment by a restriction or limitation of the time during which the executor may act, or of the property with which he may deal, or of the place wherein he is to execute the will, or by making the appointment conditional. It is not essential to the validity of the appointment of an executor that it should be an absolute one. The testator may therefore, if he so desires, make a qualified appointment such as any one of the following: by appointing a person to be his executor at a certain time, as at the expiration of five years after his death, or at an uncertain time, as upon the death of his son; or he may appoint his son to be executor when he attains his majority; or he may make the appointment for only a certain period, as from his death until the expiration of five years therefrom; or the appointment may be only in respect of his property in a certain place, as in Yorkshire, or limited only to a certain part of his property generally, as for example his live stock; or the appointment may be conditional upon the executor, *e.g.* giving security for due payment of the legacies. When such appointments as these are made, the testator should appoint an additional or substituted executor in respect of the time, place, or property not covered by the limited appointment; where he fails to do this, the court will supply the omission by appointing an administrator.

Transmission of the appointment.—The great and essential distinction between an executor and an administrator, is that the former is appointed by the will of the testator from whom he derives his title, whilst the latter derives no title whatever to his office from the testator, nor has the latter imposed upon him any trust or confidence, but he is appointed to his administratorship by the court which so constitutes him its officer for the time being and for the particular purpose. The result of this distinction is that should a sole executor die, having appointed an executor of his own will, the latter will be to all intents and purposes the executor and legal representative of the original testator. But should the first executor have died without appointing an executor, his administrator would not succeed to the executorship held by the deceased. The law recognises a great distinction between a person appointed by an executor himself, and a person who is thrust into the administration of an estate without regard to any of the personal confidences and prejudices which would accompany a personal appointment. But in order that the executorship should be thus trans-

mitted, it is necessary that the original executor should have duly proved his testator's will; if he has not done this, there will be no transmission, and the original will must be proved by an administrator *cum testamento annexo.* Where a will has appointed, and it has been proved by, several executors, the office of any executor who may die will not be transmitted to his own executor, but to his co-executors, and ultimately to the executor of the surviving co-executor.

Executor de son tort.—Should any person not appointed executor by the deceased's will, nor appointed administrator by the court, take upon himself to act as an executor, he is called in law an executor "of his own wrong," *de son tort*, and is liable to all the trouble of an executorship, without any of the profits or advantages. A person may find himself in the position of such an executor by the least intermeddling with the goods and effects of the deceased; indeed, it has been said that even milking cows, or taking a dog, will constitute him an executor *de son tort.* The circumstances of each case must of course determine the fact of such a constitution, but in regard to such slight acts of intermeddling as *e.g.* the milking of a cow, it should be noted that by merely doing acts of necessity or humanity, as locking up the goods, or burying the corpse of the deceased, no man can become chargeable as an executor of his own wrong. Such a one cannot bring an action himself in the right of the deceased, but actions may be brought against him by creditors or legatees; he should be sued as executor generally, not as one *de son tort.* A lawful executor may be joined as a defendant with an executor *de son tort;* but the latter cannot be joined as a defendant with a lawful administrator. He is chargeable with the debts of the deceased so far as assets came to his hands, provided he has acted as should a rightful executor; and as against creditors in general, he will be allowed all payments made to any other creditor in the same or a superior degree, himself only excepted. He may therefore plead to such actions that he has fully administered the deceased's estate. As against the rightful executor or administrator he cannot plead such payments; but they can be allowed him in mitigation of damages, unless perhaps upon a deficiency of assets, whereby the rightful executor or administrator may be prevented from satisfying his own debt. He is liable to an action, unless he has delivered over the goods of the intestate to the rightful administrator before the action is brought against him. And he cannot retain the intestate's property in discharge of his own debt, not even if it is a debt of a superior degree. After the will is proved, or administration granted, no person can render himself liable as an executor of his own wrong by merely intermeddling with the deceased's goods—he will be only a trespasser; it will be otherwise, however, if an intermeddling is accompanied by a claim of right as executor.

Executor's renunciation of office.—No man has a right to make another executor without his consent, and even if in the lifetime of the testator he has agreed to accept the office, it is still in his power to recede. Where any one finds himself in an undesired position of being named an executor, he may easily extricate himself therefrom by declining to act and not acting, and recording in court his non-acceptance of the position. To so decline is termed a renunciation, and every such person has the opportunity to renounce. The opportunity occurs either at any

time after the testator's death by recording his renunciation as above, or when his co-executor or a proposing administrator cites him in the Probate Division of the High Court to come in and prove the will. If he disregards the citation and fails to appear thereto, the court will take his abstention from action as a conclusive and final renunciation, and it will proceed to grant probate of the will without further regard to him. An executor cannot partly accept the executorship and renounce as to the other part; his renunciation must be complete as to all property and matters incidental to it. He cannot, therefore, accept the executorship of the will of the testator and at the same time renounce executorship of a will of which his testator was executor; the executorship must be taken with all its incidents. Where a person is appointed in the double capacity of executor and trustee thereof, if he should deal with the property he will be deemed by the law as doing so in the superior capacity of an executor. He cannot exercise an option and decide whether he will accept the executorship or the trusteeship; he must either accept or renounce both together, or accept the executorship only and decline the trust.

Duties of an executor.—The first duty of an executor is to bury the deceased in a manner suitable to the estate which he leaves behind him. Necessary funeral expenses are allowed, previous to all other debts and charges; but if the executor be extravagant, it is a species of devastation or waste of the substance of the deceased, and will only be prejudicial to himself personally, and not to the creditors or legatees of the deceased. In the next place he must prove the will of the deceased, and in default of any will, the person entitled to be administrator must also, at this period, take out letters of administration. After having duly proved the testator's will, or having obtained a grant of letters of administration, the executor or administrator must proceed to realise the estate of the deceased, and for this purpose he may bring any actions which may be necessary. The actual course of the realisation of the estate may be specifically directed by the will, and when this is so, these directions should in general be followed; but apart from such directions it lies upon an executor to collect the debts due to the estate, and to get in all outstanding assets, without delay. His duty, except so far as it may be restricted by the will, is to convert the whole of the estate into money.

To pay debts.—The next duty of an executor or administrator is to pay the debts of the deceased. And these must be paid strictly in the following order, as certain classes of debts have a preferential claim to payment before others: (1) In the first place must be paid the funeral and testamentary expenses. (2) Secondly, there come any debts which may be due to the Crown, as *e.g.* a debt due on a recognisance, or in respect of taxes. (3) Following these are any debts to which special statutes may have given a preference, as *e.g.* certain liabilities under the Friendly Societies Acts. (4) Then rank the claims of creditors who have obtained a judgment, for such creditors have priority to those whose claims have not received the sanction of a court. And in the same advantageous position as judgment creditors are those in favour

We the undersigned creditors of John Frederick Merrifield of 15 St Johns Market Camberwell in the County of London Grocer hereby on behalf of ourselves and our respective firms severally agree with the said John Frederick Merrifield that in consideration and on payment to us respectively of a composition of ten shillings in the pound on the amount of our respective debts and claims against him as stated below in the schedule hereto within thirty one days from the date of the last signature hereto and of and if nineteenths in amount of all his unsecured creditors signing and sign their names in the said schedule within fourteen days from this date we will severally accept the same in full satisfaction and discharge of our said several debts and claims and will on receipt of the said compensation give him at his expense a release or other discharge from the same several debts and claims accordingly

Dated the 1st day of May 1910.

The Schedule

Dates	Creditors signatures	Address & Description	Amount of Debt		
3rd May 1910	Graham Browne & Co	15 St Marys St EC Tea Merchants	196	3	4
3rd May 1910	A F Barrell & Sons	12 High St Bristol Sugar refiners	95	12	1
5/5/10	George Johnson	196 High Holborn WC Sundriesman	375	10	11
8 May /10	The British Inspecting Co Ltd	Harwich	51	3	9

of whose claims there have been any decrees made in Chancery, or orders made in bankruptcy. (5) Subject to the foregoing preferences in certain cases, all the creditors of a deceased must be paid *pari passu*, that is to say, share and share alike. It now makes no difference whether the debt is created by a contract under seal, as by a bond, or merely by simple contract, that is to say, by writing not under seal or by word of mouth; the creditors have generally only an equal claim upon the deceased's estate. But as soon as a creditor has obtained a judgment for his debt after the death of the deceased, he has a right to require the executor to satisfy it without regard to any excuse that there is not sufficient to pay all the ordinary creditors. It would be a good excuse on the part of the executor, however, if the assets in his hands were not sufficient to satisfy the claims of those creditors having priority over the judgment creditor. In fact, the executor is always bound to refuse to pay a debt of a lower degree, whether on a judgment or not, so long as he has no more assets than are sufficient to satisfy those debts of a higher degree of which he has knowledge. When an executor or administrator is sued for a debt due from the testator, and all the assets have been applied in due payment of the testator's debts, he may plead, as a complete defence to the action so far as he is personally concerned, that he has fully administered the estate. The creditor is then entitled to a judgment against him that the claim shall be paid out of any assets which may come into his hands in the future. An executor who is a creditor of the deceased is entitled, as against other creditors of equal degree with himself, to retain any assets which may come into his hands in satisfaction of his own debt. He may lawfully pay a debt barred by the Statute of Limitations, but not one against which a judgment has been given. If an executor gives proper notice to creditors and others [*see* ADVERTISEMENT], duly advertised in the *London Gazette* and three other newspapers, to send in their claims as directed by statute, he is entitled afterwards when the time named in the notice has expired, generally a month, to distribute the assets among the parties entitled, of whose claims he has then been apprised. Where an executor is in any difficulty as to the proper distribution of the estate, he may apply to the court for advice or direction respecting the administration of the assets; and if he acts under that advice or direction, he will be discharged so far as regards his own responsibility. He may pay debts or claims upon any evidence that he may think sufficient; and accept any composition or security for debts due to the deceased; and allow time for payment of debts; and also compromise, compound, or submit to arbitration all debts, accounts, claims, and things whatsoever, without being responsible for any loss occasioned thereby.

Having thus realised the deceased's estate and paid his debts, it remains for the executor or administrator to distribute it amongst those entitled. If there is a will, he should convey the real estate to the devisees, hand over the legacies to the legatees, and resign the residue to those entitled. If there is no will, the estate should be transferred to the heirs and next-of-kin. For further information in this connection the reader should refer to the articles on ADMINISTRATION OF ASSETS and LEGACIES and INTESTACY;

but in connection with the rights of heirs and devisees of **real estate**, it will be convenient to here again turn to the Land Transfer Act, 1897, already mentioned at the commencement of this article. By section 2 it is provided that the personal representatives of a deceased person shall hold the real estate as trustees for the persons by law beneficially entitled thereto, and those persons shall have the same power of requiring a transfer of real estate as persons beneficially entitled to personal estate have of requiring a transfer thereof. By section 3 it is enacted:—

(1) At any time after the death of the owner of any land, the personal representatives may assent to any devise contained in his will, or may convey the land to any person entitled thereto as heir, devisee, or otherwise, and may make the assent or conveyance either subject to a charge for the payment of any money which the personal representatives are liable to pay, or without any such charge: and on such assent or conveyance, subject to a charge for all monies (if any) which the personal representatives are liable to pay, all liabilities of the personal representatives in respect of the land shall cease, except as to any acts done or contracts entered into by them before such assent or conveyance.

(2) If at any time after the expiration of one year from the death of the owner of any land, if his personal representatives have failed on the request of the person entitled to the land to convey the land to that person, and after notice to the personal representatives order that the conveyance be made, or, in the case of registered land, that the person so entitled be registered as proprietor of the land either solely or jointly with the personal representatives.

Special liabilities.—An executor is not bound to pay the legacies until the expiration of one year from the death of the deceased, though he is not bound to so long delay the payment. But an administrator should not distribute an intestate's estate until the expiration of a year from his death. If there is any legacy or share payable to an infant, the executor or administrator should pay it into court, and not, unless the will expressly authorises it, to the infant or his parent, or to any other person on the infant's behalf. If a creditor of a deceased wishes to make the executor or administrator personally liable for payment of a debt, he must obtain a written promise to pay, signed by the executor or administrator sought to be charged. And there must also be a sufficient consideration therefor in order to make the promise binding; such a consideration might be a forbearance to sue. An executor should obtain the protection of the court before he proceeds to carry on the deceased's business; failing this protection he will generally become personally liable for the debts of the business contracted since the death of the deceased. But if the creditors of the latter either ask him to carry on the business, or assent either expressly or implied to his carrying it on, he will be entitled to look to the assets of the business for payment, in priority to the creditors, of any liabilities he may have properly incurred through carrying on the business. But an executor must not forthwith sell the deceased's business, having regard only to an escape from personal trouble; he is bound to consider it as an asset, and sell it only in such a way as will be most beneficial, under all the circumstances, for the estate. He is, therefore, often under a practical necessity to carry on the business. An executor or administrator must not employ the deceased's estate for his own purposes, and he must render a proper account of the estate. If he makes improper default

BIRTHS, DEATHS, AND MARRIAGES

THE yearly number of Births per 100 of population, in various countries, is as follows:—

YEARLY NUMBER OF BIRTHS PER 1000 OF POPULATION.

1. Russia in Europe	49	15. Holland	30
2. Bulgaria	44	16. W. Australia	29
3. Roumania	42	17. Denmark	28
4. Servia	40	18. Switzerland	27
5. Ceylon	38	19. Queensland	27
6. Hungary	36	20. New Zealand	27
7. Jamaica	36	21. New South Wales	27
8. Chili	35	22. United Kingdom	26
9. Austria	34	23. Norway	26
10. Spain	33	24. Sweden	26
11. Germany	33	25. Belgium	25
12. Japan	33	26. S. Australia	25
13. Italy	32	27. Victoria	25
14. Tasmania	31	28. France	20

NOTE.—The average rate for all the twenty-eight countries is 31.5.

The above birth-rates are those contained in British official returns published up to April 1910, and most of these rates relate to the year 1907. The United States and Canada cannot be included, as in these countries there is no national system of civil registration.

The birth-rate of the United Kingdom has been declining for many years, and it is now low on the list, France taking the lowest place. The following statement illustrates the fall in the birth-rate of the United Kingdom:—

Period.	Birth-rate of the United Kingdom.
1875-1879	34.1
1880-1884	32.3
1885-1889	30.8
1890-1894	29.6
1895-1899	29.1
1900-1904	27.9
1905-1908	26.5

Thirty years ago the British birth-rate was 34.1 per 1000—higher than Germany's present rate of 32.9. But the fall in the British birth-rate has been accompanied by a fall in the death-rate, so that the loss of natural increase has been to some extent counteracted—an advantage that has not been enjoyed by France. The great and increasing difference between France's birth-rate (19.7) and Germany's (32.9) is a significant fact which must materially influence the future relations of those two Powers. In a fight Germany would be the heavy-weight and France the light-weight.

The death-rates of these twenty-eight countries are as follow:—

YEARLY NUMBER OF DEATHS PER 1000 OF POPULATION.

1. Russia in Europe	32	15. Switzerland	17
2. Chili	29	16. Belgium	16
3. Roumania	27	17. United Kingdom	15
4. Ceylon	25	18. Holland	15
5. Hungary	25	19. Sweden	15
6. Jamaica	25	20. Norway	14
7. Spain	24	21. Denmark	14
8. Austria	23	22. Victoria	13
9. Bulgaria	22	23. Tasmania	12
10. Servia	22	24. W. Australia	11
11. Italy	21	25. New South Wales	10
12. Japan	21	26 S. Australia	10
13. France	20	27. Queensland	10
14. Germany	18	28. New Zealand	10

NOTE.—The average rate for all the twenty-eight countries is 18.4.

New Zealand has the lightest death-rate, a fact that to some extent may be due to New Zealand's population containing a smaller proportion of very young and very old persons than the population of other countries—Russia, for example. In default of exact knowledge of the age and sex distribution of this or that population, we are not justified in saying that because one country has a lighter death-rate than another, therefore the country with the light death-rate is the more healthy country. It may be so, but the light death-rate alone does not prove the assertion.

The death-rate of the United Kingdom is now smaller than that of any of the five other great Powers of Europe, and this decline in death-rate has been as follows:—

Period.	Death-rate of the United Kingdom.
1875-1879	20.8
1880-1884	19.5
1885-1889	18.7
1890-1894	18.8
1895-1899	17.9
1900-1904	16.9
1905-1908	15.4

The "Natural Increase" of Population in the Six Great Powers of Europe, *i.e.* the yearly excess of Births over Deaths per 1000 of Population.

Turning now to the important matter of "natural increase," *i.e* the excess of births over deaths, the facts are:—

NATURAL INCREASE, *i.e.* THE YEARLY EXCESS OF BIRTHS OVER DEATHS, PER 1000 OF POPULATION.

1. Bulgaria	22	15. Japan	12
2. Tasmania	19	16. Norway	12
3. Servia	18	17. Victoria	12
4. W. Australia	18	18. Hungary	11
5. Russia in Europe	17	19. Jamaica	11
6. New South Wales	17	20. Austria	11
7 Queensland	17	21. Italy	11
8. New Zealand	17	22. United Kingdom	11
9. Roumania	15	23. Sweden	11
10. Germany	15	24. Switzerland	10
11. Holland	15	25. Spain	9
12. S. Australia	15	26. Belgium	9
13. Denmark	14	27. Chili	6
14. Ceylon	13	28. France	0

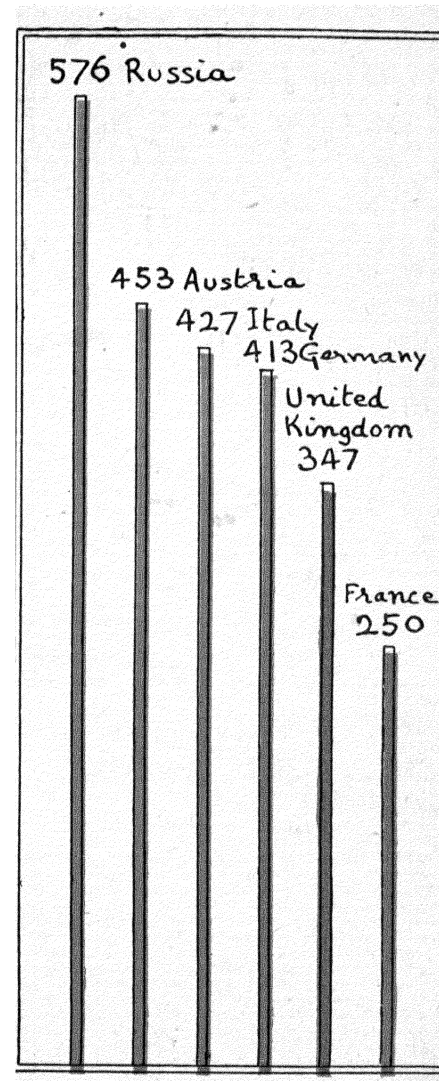
NOTE.—The average rate for all the twenty-eight countries is 13.1.

The most striking of the above facts is the result for France, which shows that the population remains practically stationary. In some years France has even an excess of deaths over births, and the altogether abnormal condition of France in respect of an absence of natural increase of population is shown by the following statement, which includes a comparison with the United Kingdom:—

NATURAL INCREASE, *i.e.* THE YEARLY EXCESS OF BIRTHS OVER DEATHS, PER 1000 OF POPULATION.

Period.	France.		United Kingdom.
	Excess of Births over Deaths.	Excess of Deaths over Births.	Excess of Births over Deaths.
1875–1879	3.1	..	13.3
1880–1884	2.4	..	12.8
1885 1889	1.7	..	12.1
1890–1894	...	0.1	10.8
1895 1899	1.3	..	11.2
1900–1904	1.4	..	11.0
1905–1908	0 4	..	11.1

Noting France's stagnation of natural increase, we see also that the natural increase of the United Kingdom has appreciably declined during the last thirty years—the fall in the British birth-rate has not been wholly met by the fall in the British death-rate. The natural increase of the population of the United Kingdom is now smaller than that of any of the five other great Powers of Europe, with the exception, of course, of France.



The Number of Children born to 100 Marriages. The Six Great Powers of Europe.

Coming to Marriages, the facts are:—

YEARLY NUMBER OF PERSONS MARRIED PER 1000 OF POPULATION.

1. Servia	21	15. S. Australia	16
2. Roumania	21	16. Austria	15
3. Hungary	20	17. Italy	15
4. Bulgaria	19	18. Holland	15
5. New Zealand	18	19. United Kingdom	15
6. Russia in Europe	17	20. Denmark	15
7. Japan	17	21. Spain	14
8. W. Australia	16	22. Victoria	14
9. Germany	16	23. Queensland	14
10. France	16	24. Ceylon	12
11. Tasmania	16	25. Norway	12
12. Switzerland	16	26. Sweden	12
13. New South Wales	16	27. Chili	10
14. Belgium	16	28. Jamaica	7

NOTE.—The average rate for all the twenty-eight countries is 15.4.

As a rule, a high marriage-rate means a high birth-rate, and we see that seven of the twelve countries above which lead in the marriage-rate are also in the first twelve in the birth-rate list already given—namely, Servia, Roumania, Hungary, Bulgaria, Russia, Japan, Germany.

France's marriage-rate (16.0) is slightly above the average, 15.4, and thus France's very low birth-rate is mainly due to the abnormal unproductiveness of French marriages.

The fertility of marriages in the various countries differs considerably, and the facts are:—

MARRIAGE-FERTILITY, *i.e.* THE NUMBER OF CHILDREN BORN TO 100 MARRIAGES.

1. Jamaica	1028	15. Tasmania	387
2. Chili	700	16. Queensland	386
3. Ceylon	633	17. Servia	381
4. Russia	576	18. Denmark	373
5. Spain	471	19. West Australia	362
6. Bulgaria	463	20. Hungary	360
7. Austria	453	21. Victoria	357
8. Norway	433	22. United Kingdom	347
9. Sweden	433	23. Switzerland	338
10. Italy	427	24. New South Wales	338
11. Germany	413	25. Belgium	313
12. Roumania	400	26. South Australia	313
13. Holland	400	27. New Zealand	300
14. Japan	388	28. France	250

NOTE.—The average rate for all the twenty-eight countries is 429.

Taking these twenty-eight countries as one whole, 429 children are born to 100 marriages, *i.e.* each marriage produces 4.29 children. But it must be noted that "the number of children born" includes all the illegitimate children, and in some countries these are numerous. To this fact is probably due the high rate in Jamaica of over ten children born to one marriage.

All the nine leading countries above, from Jamaica to Sweden, have a marriage-fertility higher than the average; and thus, as we expect to see, they are nearly all in the leading group under the birth-rate table.

The United Kingdom's rate of marriage-fertility, 347 children per 100 marriages, is much lower than that of any of the five other great Powers of Europe, with the exception of France. France and New Zealand are at the bottom of the list, with less than three children to a marriage in France. And, as stated, even this low rate includes all the illegitimate children born in France.

J. HOLT SCHOOLING.

in the investment of the funds of the estate, he is personally liable to pay 4 per cent. interest on the funds not invested; and if he improperly uses any of such funds for his own affairs he is liable to pay interest at the rate of 5 per cent. An executor or administrator may employ a solicitor or other necessary professional agent to assist him in winding up the estate, and may charge the costs thereof against the estate; but he may only charge out-of-pocket expenses in respect of himself—not anything for his own time and trouble. And this would be so, apart from any provision of the will to the contrary, in any case where the executor is a professional agent, such as a solicitor.

It is sufficient if one executor gives a receipt in order to discharge a debtor; but if more than one signs it, the receipt, if given for the purpose of mere form, will not charge the executor or administrator not actually receiving the money. But if the receipt is given under circumstances purporting that the money, though not actually received by all who signed, was under their joint control, that receipt will impose a liability upon them all. The test will be whether or no the money was in fact under their joint control. Generally speaking, an executor is liable only for his own acts, not for those of his co-executors. But if for example he should know, or have the means of knowing, that part of the estate is not in a proper state of investment, but is held upon personal security only, and not necessarily for the purposes of the will, it will be his duty to interfere and take such measures as may be necessary to put the property in a proper state of investment. It is no excuse that the property is in the hands of a co-executor and not of a stranger. *See* PROBATE; DEATH DUTIES; TRUSTEES; OFFICIAL TRUSTEE.

EXEQUATUR, a term of international law applied to the official recognition of a consul or commercial agent made by the foreign department of the state to which he is accredited, authorising him to exercise his power. In England a foreign consul's exequatur is always notified in the *London Gazette*, but in other countries it is often effected in a less formal manner. The word *exequatur* may perhaps, as in Austria, be simply impressed upon the commission under which he holds his office. He cannot act without it, and it may be refused or revoked at the pleasure of the same government. It guarantees to him the rights and privileges ordinarily incident to the position he holds. *See* CONSUL.

EXHIBIT.—A supplemental paper referred to in the principal document, identified in some particular manner, as by a certain capital letter, and generally attached to the principal document. The principal document is usually an affidavit or statutory declaration, and sometimes, in practice, the exhibit is annexed to the affidavit or declaration. But it is expressly provided in the Rules of Court that accounts, extracts from parish registers, particulars of creditors' debts, and other documents referred to by affidavit, shall *not* be annexed to the affidavit, or referred to in the affidavit as annexed, but shall be referred to as exhibits only. Each exhibit should be referred to as marked with a distinguishing mark, as "A," and should be so marked. The officer before whom the affidavit is sworn must also sign a certificate enfaced upon the exhibit, and this certificate must be marked with the short title of the cause or matter. *See* AFFIDAVIT.

EX NEW.—This is a phrase often found in conjunction with the quotation of prices in the official list of the Stock Exchange, for shares or other

securities. The general rule is that a purchaser of shares, quoted without an intimation to the contrary, is entitled to receive, in return for payment of the quoted price, all accruing rights as well as all dividends. An accruing right would exist where, for example, the holders of certain shares are entitled to subscribe for new shares in their own company upon specially advantageous terms; when, therefore, the phrase "ex new" is appended to the quotation, the general practice will be departed from, and the seller of the shares will retain the right to subscribe to the new issue. Where the right is in respect of an allotment of new shares in a company other than that one to which the shares quoted belong, the right would be excluded by the phrase *ex rights*. Sometimes a quotation is accompanied by a mystic "X" alone, or by the phrase *ex all;* here the purchaser may be excluded from drawings, dividends, "new," and "rights."

EXTORTION is, in its ordinary and proper meaning, the unlawful taking by any officer, under colour of his office, of any money or thing of value that is not due to him, or more than his due, or before it is due. It is a misdemeanour punishable by fine or imprisonment or both. To properly constitute the offence it is necessary that the "thing of value" should be received, and not merely demanded. A person from whom money has been extorted may recover it from the offender by an action for money had and received to his use; but as an alternative to this general form of action he has a right, in the case of extortion by a sheriff, to an action of debt for a £200 penalty and for the amount of the damages sustained. Against officers other than sheriffs he has the alternative of proceeding under an old statute of Edward I. to recover double the value of the thing extorted. But an officer would be liable for extortion in respect of any fees, monies, or things he may have demanded and received in good faith and in ignorance of the law. The following persons would be officers: judges, magistrates and their clerks, clerks of the peace, and bailiffs for rent. But in the case of SHERIFFS or their assistants the old law of extortion is superseded by the Sheriffs Act, 1887.

EXTRADITION is the surrender by one state to another of an individual who is found within the territory of the former, and is accused of having committed a crime within the territory of the latter. Extradition is purely a question of international comity in the absence of express stipulation. Apart from such stipulation, if a person commits a crime, of whatever character or magnitude it may be, in one state and escapes into another state, the former state cannot demand his extradition as a matter of right from the latter state. The refusal of such a demand might be an unreasonable or an unfriendly act; but it could scarcely be an act which would be held to justify menace, or reprisals, or war, in the case of powers of equal magnitude, or to justify coercion by a stronger over a weaker power. But many nations have practised extradition without treaty engagements to that effect, as the result of mutual comity and convenience; others have refused. The existence of an extradition treaty does not of itself prohibit the surrender by either country of a person charged with a crime not enumerated in the treaty.

In England this subject is regulated by the Extradition Acts, 1870 to 1906, and under which Acts any treaties which may from time to time be made are to be adopted under the Acts by Orders in Council which must set out the text

of the treaties. About fifty of such treaties have been entered into with various countries since the passing of the first Extradition Act, and full particulars of these may be found upon reference to the Statutory Rules and Orders published annually. The Acts enumerate an extensive and exhaustive list of offences, from murder to fraudulent bankruptcy, in respect of which treaties for extradition may be entered into; but not all of these offences are included in the treaty or treaties which have actually been concluded with each country. While it may be said, generally speaking, that murder will be found in every treaty, it is very possible that bankruptcy offences may be omitted in many, even in the treaties with important commercial countries such as, perhaps, the United States. In this article there is not space to set out accurately and in detail the net effect of these treaties; and, apart from that consideration, it is questionable whether it would tend to promote the public welfare to do so in a work intended for general circulation. Nor would it be safe for any layman to rely upon the results of his own researches in the Statutory Rules and Orders, and to himself estimate the true scope of each offence as technically described. And it must be borne in mind also, that even if a criminal should escape to a foreign country, the treaty with which has excepted from its operation the crime of which he is guilty, it is yet competent for the British Government to conclude another treaty with that country including that crime and having a retroactive effect. Political refugees in England cannot be surrendered to their own country in respect of *bonâ fide* political crimes there committed by them.

EXTRAORDINARY MEETINGS.—There are two classes of meetings of the shareholders of a company, one of which comprises ordinary general meetings, the other extraordinary. It would seem from the Companies Acts and from Table A, that an extraordinary meeting is one other than the annual meeting prescribed by the Act, or any other meeting of a similar character called by the directors. As a general rule, the articles of association prescribe the circumstances under which the directors are bound to convene an extraordinary meeting. Table A, which would operate as the articles of association of a company which has none of its own, provides that the directors may convene an extraordinary meeting whenever they think fit. If at any time there are not within the United Kingdom sufficient directors capable of acting to form a quorum, any director or any two members of the company may convene an extraordinary general meeting in the same manner as nearly as possible as that in which meetings may be convened by directors. The requisition, in order to be valid and effective, must express the object of the meeting proposed to be called, and must be left at the registered office of the company.

But the Companies Act, 1908, must be considered in connection with the requisition of an extraordinary meeting, for it is provided that, *notwithstanding anything in the regulations* of a company, its directors must, on the requisition of the holders of not less than one-tenth of the issued capital of the company, upon which all calls or other sums then due have been paid, forthwith proceed to convene an extraordinary general meeting of the company. The requisition must state the objects of the meeting, and must be signed by the requisitionists and deposited at the office of the company; but it may consist of several documents in the same form, each

signed by one or more of the requisitionists. If the directors do not proceed to cause a meeting to be held within twenty-one days from the date of the deposit of the requisition, the requisitionists, or a majority of them in value, may themselves convene the meeting; but a meeting so convened cannot be held after three months from the date of the deposit of the requisition. If at the extraordinary meeting a resolution is passed which requires confirmation at another meeting, the directors must forthwith convene a further extraordinary general meeting for the purpose of considering the resolution and, if thought fit, of confirming it as a special resolution. If the directors do not convene this further meeting within seven days from the date of the passing of the first resolution, the requisitionists, or a majority of them in value, may themselves convene the meeting. Where requisitionists are themselves convening a meeting in consequence of the default of the directors, they must do it in the same manner, as nearly as possible, as that in which the directors are required to convene such a meeting.

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FACTOR is the name given to an agent who is employed to sell goods, wares, or merchandise entrusted to his possession or consigned to him, by and for his principal, for a reward commonly called a "factorage," or "commission." Where a factor guarantees to his principal the payment of any goods he may sell, such a factor is said to be *del credere*. In the United States the word "factor" is rarely used in this connection, the usual term being "commission merchant"; the two expressions are, however, still synonymous there. A factor is called a *supercargo* when his employment is to dispose of a cargo which he accompanies on a voyage. There is an important difference between a factor and a broker. A factor has goods consigned to him from a principal abroad or at a distance, with the usual intention that they may be disposed of in the factor's own name as though they are the factor's own property, and without reference to the name of his principal, the latter frequently receiving from the factor some payment in advance on the price expected to be realised by the goods. A retail jeweller, who receives goods from a manufacturer on sale or return, has been held, on the facts of the particular case, to be a factor in respect to those goods (*Weiner* v. *Harris*). From this it results that the primary act of the principal always vests in the factor an authority to deal with the goods in as full a manner as though the factor were their owner, but it does not invest the factor with any authority to deal with any other goods; and, in case of any advances or payments being made by the factor in respect of the goods, it reasonably follows that the factor acquires in the goods a special property, as also a general lien thereon. A broker, on the other hand, not being entrusted with the possession of the goods, the subject of his agency, has no authority to sell them in his own name, and can only deal with them strictly within the limits of his special authority in order to bind his principal by his acts; he has no special property in the goods, nor any lien thereon. It is further incident to the respective relationships of factor and broker to their principal, that the

former can only act on behalf of his principal and not also on behalf of the buyer, whilst the broker may be an effectual agent for both parties in the same transaction. A broker's bought and sold notes will bind both seller and buyer if he is, in fact, the agent of both; but a factor can bind the seller only, and his bought note will not bind the buyer so as to take the transaction out of the scope of the Sale of Goods Act.

The **authority** of a factor is conferred in the same manner as that of any other agent; merely to entrust him with the goods for sale is impliedly a sufficient authority. But it is important to note that the special authority and power of a factor is, more than other agents generally, largely defined by usage. This usage is fully recognised by the law, but it must be understood as being confined to the usage of the particular market in which the factor deals. The law assumes that every one who deals in a particular market must be taken to deal according to the known general and uniform usage of that market; the factor's principal must accordingly be taken as intending that the business to be done is to be done according to that usage, and it is no sufficient reason to excuse the performance by the principal of his factor's bargain that he did not in fact know of the existence of that usage. On this topic reference might be made to vol. i. p. 47. But apart from such usage, or a special authority, a factor cannot warrant the quality of the goods, or sell them on credit, or pledge or exchange them, or the bill of lading referring to them, in respect of matters personal to himself only. In such improper cases of pledge or exchange, although the principal has his full legal remedies against the factor personally, his remedies as against the rights of third parties are subject to very material restrictions. These rights of third parties and these restrictions generally are dealt with in the article on the FACTORS ACT.

General position of a factor.—A factor is not answerable against all events for the safety of the goods he has in his charge; it is sufficient if he does all that he can reasonably be expected to do for their preservation. The responsibility of a factor differs from that of a carrier or an innkeeper, for he is only bound to keep the goods with the same care that he would keep his own, on the assumption that he is himself a business man of average prudence. He is not liable to his principal, therefore, in case of robbery, fire, or any other accidental damage which may happen without his default. But though the immediate cause of the loss is one which no care could prevent, such as lightning, yet if improper delay in the removal of the goods had previously intervened, it is not excused by the nature of the accident; and this may be taken as a general rule applicable to all cases of bailments. The position of a factor differs in yet another respect from that of a mere agent, for he may be justified, by a regard to the convenience and benefit of his principal, in delegating his trust to a third party; provided, of course, that due care is taken to select a proper person. Thus it has been decided by the courts that a factor is not obliged to keep the goods always in his own custody, and that he may, for convenience of his business, place them in a public warehouse for safe custody without being personally liable to his principal for their value, in case they should be stolen therefrom or burnt therein. He must keep proper accounts and duly render them to his prin-

cipal, each transaction being kept separate from the others; the monies or goods of one principal must not be mixed with his or those of other principals.

Insurance.—Generally speaking, it is in the province of a factor to protect the goods by insurance, and to do this he may insure in his own name and recover for the loss, subject to an account with his principal. It is, however, his *duty* to do so where the general usage of trade requires it. And particularly is this his duty where the course of dealing between his principal and himself is such that the latter has been in the habit of effecting insurances by directions of the former. Indeed, in the latter case, and unless he has previously given notice to his principal discontinuing that mode of dealing, he is bound to comply with an order to insure, even though he has no effects of his principal in hand at the time of receiving the order. In addition to the above case it has been for a long time settled as clear law, that in the following two cases an order for insurance must be obeyed:—First, Where a merchant abroad has effects in the hands of his agent or correspondent here, he has a right to expect that his agent will comply with an order to insure; and this is so because the principal is entitled to dispose of the money in his factor's hands in what manner he pleases. Secondly, Where the merchant abroad sends bills of lading to his correspondent here, with an order to insure as the implied condition on which he is to accept the bills of lading, and the correspondent accepts the bills of lading, he must obey the order; for this is one entire transaction, and the acceptance of the bills of lading amounts to an implied agreement to perform the condition. Should a factor fail to effect an insurance in any case wherein he is under an obligation to do so, he himself practically becomes the insurer thereof, and is liable as such in the event of loss. Because in such a case the factor is himself in the position of an insurer; he has the same rights in the event of a loss as an insurer would have had who was a stranger to the parties. For example he may deduct the amount of the premium which should have been payable, or may require his principal to prove an insurable interest, or may avail himself of an illegality, or may claim relief in respect of any deviation in the voyage. But though he may become an insurer in the foregoing sense, he is never an insurer in the sense that he guarantees the effectual insurance by a broker in a case where he has instructed him to insure, and done all things on his part necessary for the broker to carry out his instructions. Default of the insurance broker under such circumstances imposes no liability upon the factor.

Payment of duties.—Where duties are payable upon the importation or exportation of goods, it is the business of the factor employed in the receipt or despatch of them to take care that the proper entries are made and the duties satisfied. For if by reason of a false or imperfect entry, or by being landed before the customs duties are paid or compounded, the goods are forfeited or any extra expense is incurred, the factor is liable to answer for the loss; unless, indeed, the entry is pursuant to the invoice or letters of advice, for then it is not his fault.

Lien.—A factor has a lien for the general balance of his charges upon any goods of his principal which may come at any time into his hands in his capacity of factor, lawfully and by the authority of his principal; but this

Agreement made the Twenty first day of March One thousand nine hundred and ten **Between** Robert Masone of 15 Grange Road Croydon in the County of Surrey Grocer (hereinafter called "the employer") of the one part and **William Henry Smith** of 8 Alfred place Croydon aforesaid Grocer's salesman (hereinafter called "the manager") of the other part **Whereby** it is witnessed as follows:-

1 **The** employer will employ the manager who will well and truly serve the employer for a term of Three years from the date hereof as general manager of him the employer in his trade or business of a grocer at 15 Grange Road Croydon aforesaid or at such other place in England and Wales as the employer may from time to time decide the manager to devote the whole of his time and attention during the usual hours of business to the general management superintendence and improvement of and general assistance in the said trade or business using therein the utmost of his power skill and ability and not engaging in any other trade business or occupation whatsoever at any time during the said term

2 **The** manager is also to comply with all special requirements of the employer in relation to the said trade or business and to readily obey all special orders and instructions of the employer

3 **The** employer will pay to the manager the clear yearly sum of One hundred and fifty six pounds by equal weekly payments of Three pounds each on the Friday of every week the first of such payments to become due and payable on Friday next the Twenty eighth instant and will also pay to the manager by way of further salary only a sum equal to Five per cent of the net profits if any of the said trade or business the amount of such further salary to be ascertained and paid to the manager on the Thirtieth day of June and Thirtyfirst day of December in every year. But such further salary is limited to the profits if any of the business at 15 Grange Road aforesaid or instead thereof of any other business at another place in which for the time being the manager shall be employed hereunder

4. **The** manager will punctually and accurately keep and enter up or cause to be so kept and entered up all such books of account memoranda documents and other books accounts and papers as the employer shall from time to

time prescribe and allow the employer prompt facility at any time for the inspection and investigation thereof and generally will so act in the foregoing duties in strict accordance with the rules and regulations for the time being imposed by the employer He shall also forthwith produce to the employer or to any person on his behalf authorized in writing any special account or balance which the employer or such person shall demand and in like manner pay to the employer or such person as aforesaid any monies whatsoever belonging to the employer of which he the manager may for the time being have possession

5. And generally the manager will be true just and faithful to the employer in all his accounts business dealings and transactions whatsoever in and relating to the said trade or business and will conduct himself properly in the course of his employment towards the employer and his customers and business connections

6 The manager will not divulge or disclose to any person or persons whomsoever the secrets entrusted to him or arising or coming to his knowledge in the course of his employment or otherwise either in relation to the said trade or business or to the private concerns of the employer

7 And if after the expiration of the first six months of the said term either of the parties hereto shall desire to determine the employment it shall be lawful for him so to do upon giving to the other Three months previous notice thereof in writing but the rights of either party which shall have accrued hereunder at the time of the determination shall not be prejudiced thereby

8. But in the event of the manager committing any breach of his obligations hereunder or otherwise misconducting himself the principal may summarily dismiss him from his employment without notice and upon payment of salary (other than that contingent upon profits as aforesaid) only to the date of such dismissal and thereby all other the rights of the manager hereunder shall be absolutely determined

As witness the hands of the said parties

Witness
F. R. Ford
Clerk to Mr R. Mason

Robert Mason
Wm Hy Smith

lien is lost as soon as he parts with his possession of those goods. Nor is this lien limited only to such charges as aforesaid; it will attach in a case where the factor having become surety for his principal, as by becoming a party to a bill of exchange, has thereby been compelled to pay the debt. Nor does it attach only to goods in specie, for it extends even to the proceeds and securities received in the course of his business. In order to found the lien of a factor, it is necessary that the property upon which it is claimed should have been in his possession; for if goods after being consigned to a factor are stopped in course of transit, no right of lien vests in him, the owner having power to stop them *in transitu*, so as to prevent the factor gaining a lien thereon, notwithstanding the latter has accepted bills drawn upon him on the faith of the consignment. A lien will not attach to goods entrusted to him for a special purpose inconsistent with the existence of the lien; but mere special instructions to sell in his principal's name, or at a particular place, would not be inconsistent with the attachment of his lien.

Generally.—Where a factor has sold goods in his own name, he is entitled, until the intervention of his principal, to himself sue for the price thereof; and if he has an undischarged lien thereon, the principal cannot prevent him exercising that right. A person thus sued by the factor cannot set-off against the factor's claim any payment he may have made to the principal, unless the payment had been induced by the factor's own conduct; but, on the other hand, if the principal sues, and the purchaser has a set-off against the factor, that set-off will be a good defence to the action by the principal, provided the purchaser at the time of his purchase had no notice that the factor was only selling the goods of a principal, and accordingly thought that he was buying the factor's own goods. A factor's receipt for payment is a good answer by a *bonâ fide* purchaser to any action which the principal may bring for the price thereof. *See* AGENCY; BROKER; CONSIGNMENTS.

FACTORIES AND WORKSHOPS.—The subject of factories and workshops, their structural and sanitary condition, the safety of the machinery used therein, the conditions of employment, and those of work and wages generally, has now for many years found an important place in the legislation of the country. Almost immediately upon the introduction of the factory system it became evident, to those who had some uninterested regard for the working classes, that there rested upon Parliament an imperative duty to interfere between the employer and employee, and to see that the latter was to some extent protected from unreasonable exactions and restrictions from the employing class. And it was also recognised, as perhaps an intrinsically more important matter than the merely contractual rights of the factory operatives, that there should be some special legislative protection of women and children so far as regarded their employment in factories, and also that sanitation and safety, in and about the work of factories, should be stringently enforced. To these ends, and ultimately to the end also that the hours of labour and the manner of the payment of wages should be regulated by governmental authority, were the various Factory and kindred Acts passed. At their introduction, it is instructive to remark, they were strenuously opposed on the ground that they aimed at an unwarranted and improper interference by the State with the rights

of the subject—with the mutual rights of employers and employees to freely contract one with another upon the subject of labour and the conditions of and reward for its employment. And this strenuous opposition came mainly from the more advanced and so-called Liberal politicians and political thinkers of the day. It would not however be reasonable, regarding their action from the standpoint of the thought and position of the business man of to-day, to stigmatise their opposition as prompted solely by a selfish regard for their own material interests and a reckless indifference to the welfare of the workers. It must be remembered that these opponents for the time being to the State protection of the working classes had themselves just nursed and educated through its youth, and set fairly upon its future life of unparalleled prosperity, the great modern capitalistic and individualistic system of industry which has made it possible for the British empire to indubitably obtain and retain the commercial headship of the world. And this they had been able to accomplish only as the result of a persistent insistence upon the abstention of the State from an interference against their interests on behalf of the privileged classes, upon the general recognition of the principle of freedom of contract. No wonder, therefore, that they viewed with apprehension the endeavours of Parliament from time to time to especially protect and invest with privilege yet another class of the community, and that of all others the working classes upon whom they depended for labour.

But the experience of about 100 years of piecemeal factory legislation, for ever becoming increasingly protective of the interests of the working-classes, has shown how groundless were those early apprehensions of the employers. It would, in fact, be now impossible to truthfully distinguish the latter class from any other class of the community, and to assert that they have any special antagonism to protective factory legislation of a reasonable character. As for any legislation of any other character than the latter, that would be properly a subject of opposition by all, without regard to class or individual interest. In 1878 the many statutes relating to factories, which had then been for years past in course of accumulation, were repealed, and in their stead was passed the Factory and Workshop Act of that year, which codified the law on the subject as it had then previously existed. But since that time there were enacted several further very important statutes, including the Factory Acts of 1883, 1891, and 1895, which introduced changes so very important and extensive as to render desirable a fresh codification of the law. Accordingly, in 1901 was passed the codifying statute known as the Factory and Workshop Act, 1901, which now, together with the Employment of Children Act, 1903, and the Orders issued thereunder, represents the whole body of the law on the subject.

Factories and workshops—what they are.—By *textile factory* is meant any premises wherein, or within the curtilage of which, steam, water, or other mechanical power is used to move or work any machinery employed in or in connection with the manufacture of cotton, wool, hair, silk, flax, hemp, jute, tow, china-grass, cocoanut fibre, or other like material, either separately or mixed together or mixed with any other material, or any fabric made thereof. But print-works, bleaching and dyeing works, lace ware-

houses, paper-mills, flax scutch mills, rope-works, and hat-works are not deemed by the Act to be textile factories.

The expression *non-textile factory* means—

(*a*) Any works, warehouses, furnaces, mills, foundries, or places named in the following list of non-textile factories, which is based upon the list known as *Part One* of the Sixth Schedule to the Act.

(1) "Print-works," or premises in which persons are employed to print figures, patterns, or designs upon any cotton, linen, woollen, worsted, or silken yarn, or upon any woven or felted fabric not being paper; (2) "Bleaching and Dyeing works," or premises wherein are carried on the processes of bleaching, beetling, dyeing, calendering, finishing, hooking, lapping, and making up and packing any yarn or cloth of any material, or the dressing or finishing of lace or any one or more of such processes or any process incidental thereto; (3) "Earthenware works," where persons work for hire in making or assisting to make or finish earthenware or china of any description, except bricks and tiles not being ornamental tiles; (4) "Lucifer-match works," wherein persons work for hire in making lucifer matches or in mixing the chemical materials for making them, or in any process incidental to making lucifer matches, except the cutting of the wood; (5) "Percussion-cap works," wherein wage earners make percussion caps, or mix or store the chemical materials for making them, or are engaged in any process incidental to making percussion caps; (6) "Cartridge works," wherein wage earners are engaged in making cartridges or in any process incidental thereto, except the manufacture of the paper or other material that is used in making the cases of the cartridges; (7) "Paper-staining works," where wage earners print a pattern in colour upon sheets of paper, either by blocks applied by hand or by rollers worked by steam, water, or other mechanical power; (8) "Fustian-cutting works"; (9) "Blast furnaces," or any other furnace or premises wherein the process of smelting or otherwise obtaining any metal from the ores is carried on; (10) "Copper-mills"; (11) "Iron-mills," or any mill, forge, or other premises in or on which any process is carried on for converting iron into malleable iron, steel, or tin plate, or for otherwise making or converting steel; (12) "Foundries," that is to say, iron, copper, and brass foundries, and other places wherein any metal is founded or cast, unless the process is carried on by not more than five persons and as subsidiary to the repair or completion of some other work; (13) "Metal or Indiarubber works," or premises in which steam, water, or other mechanical power is used for moving machinery employed in the manufacture of machinery or in the manufacture of any article of metal not being machinery, or in the manufacture of indiarubber or guttapercha, or of articles made wholly or partially of indiarubber or guttapercha; (14) "Paper-mills;" (15) "Glass works;" (16) "Tobacco factories;" (17) "Letterpress printing works;" (18) "Bookbinding works;" (19) "Flax scutch mills;" (20) "Electrical stations," that is to say, any premises or that part of any premises in which electrical energy is generated or transformed for the purpose of supply by way of trade, or for the lighting of any street, public place, or public building, or of any hotel or of any railway, mine, or other industrial undertaking.

(*b*) Any premises or places enumerated in the following list, wherein or within the precincts of which steam, water, or other mechanical power is used in aid of the manufacturing process carried on there. This list of non-textile factories *and workshops* is based on, and referred to, as *Part Two* of the Sixth Schedule of the Act.

(21) "Hat-works," or premises wherein hats are manufactured, or any process carried on incidental to their manufacture; (22) "Rope-works," that is to say, any premises being a ropery, rope-walk, or rope-work in which is carried on the laying or twisting or other process of preparing or finishing the lines, twines, cords, or ropes, and in which machinery moved by steam, water, or other mechanical power is not used for drawing or spinning the fibres of flax, hemp, jute, or tow, and which has no internal communication with any buildings or premises joining or forming part of a textile factory, except such communication as is necessary for the transmission of power; (23) "Bakehouses," or any places in which are baked bread, biscuits, or confectionery, from the baking or selling of which a profit is derived; (24) "Lace warehouses," that is to say, any premises, room, or place, not included in bleaching and dyeing works as defined above, in which persons are employed upon any manufacturing process or handicraft in relation to lace, subsequent to the making of lace upon a lace machine moved by steam, water, or other mechanical power; (25) "Shipbuilding yards," wherein any ships, boats, or vessels used in navigation are made, finished, or repaired; (26) "Quarries," that is to say, any place, not being a mine, in which persons work in getting slate, stone, coprolites, or other minerals; (27) "Pit-banks;" (28) Dry-cleaning, carpet-beating, and bottle-washing works.

(*c*) Any premises wherein or within the precincts of which any manual labour is exercised by way of trade, or for purposes of gain, in or incidental to any of the following purposes, namely—(i.) the making of any article or of part of any article; or (ii.) the altering, repairing, ornamenting, or finishing of any article; (iii.) the adapting for sale of any article; *and* wherein or within the precincts of which steam, water, or other mechanical power is used in aid of the manufacturing process carried on there.

By the expression TENEMENT FACTORY (*q.v.*) is meant a factory where mechanical power is supplied to different parts of the same building occupied by different persons for the purpose of any manufacturing process or handicraft, in such a manner that those parts constitute in law separate factories. For the purposes of the provisions of the Factory Act with respect to tenement factories, all buildings situate within the same close or curtilage are treated as one building. A "workshop" means any place named in Part Two of the Sixth Schedule, which is not a factory. It also means any premises, room, or place, not a factory (to or over which the employer of the persons working therein has the right of access or control), wherein, or within the precincts of which, any manual labour is exercised by way of trade or for purposes of gain in or incidental to any of the following purposes, namely:—(*a*) the making of any article or of part of any article; or (*b*) the altering, repairing, ornamenting, or finishing of any article; or (*c*) the adapting for sale of any article. A "tenement workshop" means any workplace in which, with the permission of or under agreement with the owner or occupier, two or more persons carry on any work which would constitute the workplace a workshop, if the persons working therein were in the employment of the owner or occupier. Wherever the expression "workshop" is used, it must be taken as including a tenement workshop. A room solely used for the purpose of sleeping therein is not deemed to form part of a factory or workshop. Where a place situate within the close or precincts of a factory or workshop is used solely for some purpose other than the business of the factory or workshop, it is not considered to form part of the factory or work-

shop for the purposes of the Act; but it will be considered to be a separate factory or workshop, if otherwise it would fall within such a description. The fact that a place is entirely in the open air will not exclude it from the definition of a factory or workshop. The exercise of young persons and children in a recognised efficient school, during school hours, in any manual labour for the purpose of instructing them in any art or handicraft, will not constitute an employment within the meaning of the Act. Separate branches of work carried on in the same factory or workshop may be treated as if they constituted different factories or workshops.

Employment and working for hire.—For the purposes of the Act, an apprentice is deemed to work for hire. And a woman, young person, or child, who works in a factory or workshop, whether for wages or not, either in a manufacturing process or handicraft, is deemed to be employed therein within the meaning of the Act. And so she or he is if only engaged in cleaning any part of the factory or workshop used for any manufacturing process or handicraft; or in cleaning or oiling any part of the machinery; or in any other kind of work whatsoever incidental to or connected with the manufacturing process or handicraft, or connected with the article made or otherwise the subject of the manufacturing process or handicraft therein. But nothing in the Act will extend to any young person being a mechanic, artisan, or labourer, working only in repairing either the machinery in, or any part of, a factory or workshop. Employment is, in all cases, deemed to be continuous unless interrupted by an interval of at least half-an-hour. No child who is employed half time under the Act can be employed in any other occupation. And as to the employment of children generally, *see* CHILDREN.

Men's workshops.—Certain of the provisions of the Act do not apply to men's workshops, that is to say, workshops conducted on the system of not employing any woman, young person, or child therein. Amongst the provisions the application of which is so excluded may be mentioned:—(1) the regulation as to temperature, thermometers, means of ventilation, drainage of floors, sanitary conveniences, opening of doors, and power to make orders as to dangerous machinery and inquests; (2) the provisions as to hours of work, holidays, fitness for employment, and the education of children; (3) the special provisions for fans, lavatories, and meals in dangerous and unhealthy industries; (4) regulations as to work and wages; (5) certain regulations relating to the affixing of abstracts and notices, and the keeping of a general register, and making periodical returns.

General definitions.—In order to clearly understand the operation of the Act, it is necessary to understand the meaning of certain terms. Thus "child" means a person under the age of fourteen years and who has not, being of the age of thirteen years, obtained the certificate of proficiency or attendance at school required by the Act. "Machinery" includes any driving strap or band; and the expression "mill-gearing" comprehends every shaft, whether upright, oblique, or horizontal, and every wheel, drum, or pulley, or other appliance by which the motion of the first moving power is communicated to any machine appertaining to a manufacturing process. "Night" means the period between nine o'clock in the evening and six o'clock in the succeeding morning; "parent," a parent or guardian of, or person having the legal custody of, or the control over, or having direct benefit from the wages of, a young person or child; "week," the period between midnight on Saturday night and midnight on the succeeding Satur-

day night; "woman," a female of eighteen years and upwards; and "young person," a person who has ceased to be a child and is under the age of eighteen years.

Administration.—*Inspectors.*—The provisions of the Factory and Workshop Act are administered by the Home Office through a large staff of inspectors, amongst whom are to be found several ladies. For the purpose of the execution of the Act an inspector has power to do all or any of the following things, namely—(*a*) To enter, inspect, and examine a factory or workshop at all reasonable times, by day and night, when he has reasonable cause to believe that any person is employed therein; and to enter by day any place he has reasonable cause to believe is a factory or workshop; and (*b*) to take a constable with him, in either case, if he has reasonable cause to apprehend a serious obstruction in the execution of his duty; and (*c*) to require the production of, and to examine and copy all registers, certificates, notices, and documents kept in pursuance of the Act; and (*d*) to make such examination and inquiry as may be necessary to ascertain whether public health and factory enactments for the time being in force are complied with, so far as respects the particular factory or workshop and the persons employed therein; and (*e*) to enter any school in which he has reasonable cause to believe that children employed in a factory or workshop are for the time being educated; and (*f*) to examine, *either alone* or in the presence of any other person as he thinks fit, with respect to matters under the Act, every person whom he finds in a factory or workshop or such a school as aforesaid, or whom he has reasonable cause to believe to be or to have been, within the preceding two months, employed in a factory or workshop, and to require every such person to be examined, and to sign a declaration of the truth of the matters respecting which he is so examined; and (*g*) to exercise any other powers that may be necessary for carrying the Act into effect. Every inspector is furnished by the authorities with a certificate of his appointment; and on applying for admission he must, if so required, produce that certificate to the occupier of the factory or workshop.

The occupier of a factory or workshop, and his agents and servants, must furnish the means required by an inspector as necessary for the full exercise of his powers under the Act in relation to that factory or workshop. Any one who wilfully delays an inspector in the exercise of his duty; or fails to comply with any one of his proper requirements; or conceals, or prevents, or attempts to conceal or prevent, a woman, young person, or child from appearing before or being examined by the inspector, will be deemed to have committed an obstruction, and will thereby incur a fine of £5. But no person, when being questioned by an inspector in relation to the matters referred to in the foregoing paragraph, is bound to answer any question or to give any evidence tending to incriminate himself. In respect to obstruction, it should be noted that if it occurs at night in a factory or workshop other than a domestic one, the fine may be £20; where it is a domestic factory or workshop, the fine is £1 for an obstruction by day, and £5 for one by night. Second and subsequent convictions carry further penalties. If the inspector is so authorised in writing under the hand of the Secretary of State, he may appear, although not a counsel, solicitor, or law agent, to conduct any proceedings in which he may be concerned in the discharge of his duty, before

a court of summary jurisdiction or a justice. The officers of the local authority have also a power of entry and inspection in connection with the discharge of their duties.

Certifying surgeons.—These are the medical practitioners appointed to assist in the administration of the Act. Such a surgeon must not be the occupier of the factory or workshop for which he has been appointed certifying surgeon; nor must he be directly or indirectly interested therein; or in any process or business carried on therein, or in a patient connected therewith. He receives rules for his guidance from the Home Office; grants certificates of fitness for employment; is required, if so directed by the Home Secretary, to make any special inquiry and re-examine any young person or child; and he must make a certain yearly report. If there is no special certifying surgeon for a factory or workshop, his duties fall upon the poor-law medical officer for the district in which the factory or workshop is situate. His fees are payable by the occupier of the factory or workshop, unless they are in respect of an examination or of an investigation of an accident, made in pursuance of a direction of the Home Secretary. The fee for an investigation must not be more than 10s. nor less than 3s. He may agree with the occupier as to their amount; but in the absence of such an agreement they will be in accordance with the following scale, and will become due and payable by the occupier on the completion of the examination, or if any certificates are granted, at the time at which the certificates are signed, or at any other time directed by an inspector. Where the certifying surgeon receives notice of an accident in the factory or workshop, he must, with the least possible delay, proceed there and make a full investigation as to the nature and cause of the death or injury caused by that accident, and within the next twenty-four hours send a report thereof to the inspector. For this purpose he is vested by statute with the full powers of an inspector, and may also enter any place to which the person killed or injured has been removed.

FEES OF CERTIFYING SURGEONS.

Part I.

Fees on Examination for Certificates of Fitness for Employment.

When the examination is at the factory or workshop	2s. 6d. for each visit, and 6d. for each person after the first five examined at that visit; and also, if the factory or workshop is more than one mile from the surgeon's residence, 6d. for each complete half mile over and above the mile.
When the examination is not at the factory or workshop, but at the residence of the surgeon, or at some place appointed by the surgeon for the purpose, and that place as well as the day and hour appointed for the purpose has been published in the prescribed manner	6d. for each person examined.

PART II.

Fees on Examination by direction of the Secretary of State, or in pursuance of Regulations under the Act.

When the number of hands is under			10	2s. 6d.	per visit.
,,	,,	,,	20	3s. 0d.	,,
,,	,,	,,	30	3s. 6d.	,,
,,	,,	,,	50	4s. 0d.	,,
,,	,,	,,	75	4s. 6d.	,,
,,	,,	,,	100	5s. 0d.	,,
,,	,,	,,	over 100	7s. 6d.	,,

With the addition of 1s. for every mile or part of a mile in excess of one mile from the surgeon's residence.

Special orders are made from time to time by the Home Secretary for the enforcement of the provisions of the Act, and they are published in such manner as may appear to be best adapted for the information of all persons concerned. Persons who are likely to be within the scope of the Act should apply to the Home Office for information as to whether any special orders have been made in respect of their class of trade or business.

Notices, registers, and returns.—Within one month from the time a person begins to occupy a factory or workshop he must serve upon the inspector for the district a written notice containing its name and address, the address to which he desires his letters to be addressed, the nature of the work, the nature and amount of the moving power therein, and the name of the person or firm under which the business is to be carried on. The penalty for a contravention hereof is £5. He must also affix, and keep affixed at the entrance, and in such other parts as the inspector may direct, and in such a position as to be easily read by the employees—(*a*) the prescribed abstract of the Act; and (*b*) a notice of the name and address of the prescribed inspector; and (*c*) a notice of the name and address of the certifying surgeon for the district; and (*d*) a notice of the clock (if any) by which the period of employment and times for meals in the factory or workshop are regulated; and (*e*) every notice and document required by the Act to be affixed. The penalty for contravention is £20. There must also be duly kept a certain prescribed register, called the general register; it must be duly entered up by the occupier of the factory or workshop, be open to the inspection of the certifying surgeon, and extracts therefrom supplied to the inspector as he may require. The penalty for non-compliance herewith is £5. Great care should be taken in keeping this register, for it is provided that "where an entry is required by this Act to be made in the general register, the entry made by the occupier of a factory or workshop or on his behalf shall, as against him, be admissible as *primâ facie* evidence of the facts therein stated, and the failure to make any entry so required with respect to the observance of any provision of this Act shall be admissible as *primâ facie* evidence that that provision has not been observed." Under a penalty of £10 a return of the employees must be made, as directed by the Home Secretary, at intervals of not less than one nor more than three years.

Having now set out, by way of introduction, the more general provisions

of the Factory and Workshop Act, 1901, the reader who desires a special information should refer to such articles as FACTORY CHILDREN and their Education; HEALTH AND SAFETY OF FACTORIES; HOME WORK; HOURS OF WORK; LAUNDRIES; OVERTIME; PENALTIES UNDER FACTORY ACT; SCHOOL-BOARD; TENEMENT FACTORIES; UNHEALTHY AND DANGEROUS TRADES; WORK AND WAGES; WOMEN AND CHILDREN IN FACTORIES.

FACTORS ACT.—By the common law an agent who is entrusted with the possession of goods cannot transfer them to a third party so as to give to the latter a better title to them than he, the agent, himself possesses, or is authorised by his principal to confer. From this doctrine it results that any person who buys goods from another would have to return them to the true owner if the person selling were not such, or not authorised to sell; and this would be so even if the property were in the possession of the person selling, and the purchaser had bought it *bonâ fide* and duly paying for it. But this rule of the common law, having been found to work inharmoniously with the general course of modern business, has been from time to time modified in favour of *bonâ fide* purchasers from mercantile agents by a series of Factors Acts, commencing with two in the reign of George IV. and ending with one of the year 1877, and finally by the Factors Act of 1889, which, repealing the former Acts, has consolidated and amended their provisions in what is practically a code of law on the subject. For the purposes of this Act certain express **definitions** of terms are therein set out. Thus—(1) the term *mercantile agent* means a mercantile agent having in the customary course of his business as such agent authority either to sell goods, or to consign goods for the purpose of sale, or to buy goods, or to raise money on the security of goods; (2) the expression *goods* includes wares and merchandise; (3) the expression *document of title* includes any bill of lading, dock warrant, warehousekeeper's certificate, and warrant or order for the delivery of goods, and any other document used in the ordinary course of business as proof of the possession or control of goods, or authorising or purporting to authorise, either by indorsement or by delivery, the possessor of the document to transfer or receive goods thereby represented; (4) the expression *pledge* includes any contract pledging or giving a lien or security on goods, whether in consideration of an original advance or of any further or continuing advance, or of any pecuniary liability; (6) the expression *person* includes any body of persons corporate or incorporate. He would not be a mercantile agent who is simply an employee at a small salary to sell goods for his employer by retail on commission.

Sale or pledge by mercantile agent.—Where a mercantile agent is, with the consent of the owner, in possession of goods or of the documents of title to goods, any sale, pledge, or other disposition of the goods made by him, when acting in the ordinary course of business of a mercantile agent, will, subject to the provisions of the Act, be as valid as if he were expressly authorised by the owner of the goods to make the same. But the person who takes under the disposition must have acted in good faith, and not had at the time of the disposition any notice that the person making the disposition had no authority to make it. Where a mercantile agent has, with the consent of the owner, been in possession of goods or of the documents of title to goods, any sale, pledge, or other disposition which would have been valid

if the consent had continued, will be valid notwithstanding the determination of the consent: provided, however, that the person taking under the disposition had not at the time thereof any notice that the consent had been determined. If the mercantile agent obtained possession of any documents of title to goods by reason of his being, or having been, with the consent of the owner, in the possession of the goods represented thereby, or of any other documents of title to the goods, his possession of the first mentioned documents will, for the purposes of the Act, be deemed to be with the consent of the owner. And for the purposes of the Act the consent of the owner is always presumed in the absence of evidence to the contrary. It should be noted that in the foregoing the person upon whom the Act confers the power of effectual disposition to those who take *bonâ fide* is a mercantile agent and no other; and consequently it is of importance that the definition of that term, as given above, should be carefully considered and fully understood. So long as the consent of the owner has been in fact given, it is of no importance to a *bonâ fide* vendee or pledgee if it should turn out to have been obtained by some fraudulent misrepresentation on the part of the mercantile agent. A pledge by a mercantile agent of the documents of title to goods is deemed by the Act to be a pledge of the goods themselves. But should he make a pledge as security for a debt or liability due from the pledgor to the pledgee before the time of the pledge, the pledgee acquires no further right to the goods than could have been enforced by the pledgor at the time of the pledge. For the purposes of the Act, an agreement made with a mercantile agent through a clerk, or other person authorised in the ordinary course of business to make contracts of sale or pledge on his behalf, is deemed to be an agreement with the agent.

The consideration necessary for the validity of a sale, pledge, or other disposition of goods, in pursuance of the Act, may be either (*a*) a payment in cash; or (*b*) the delivery or transfer of other goods, or of a document of title to goods, or of a negotiable security; or (*c*) any other valuable consideration. But where goods are pledged by a mercantile agent in consideration of the delivery or transfer of other goods, or of a document of title to goods, or of a negotiable security, the pledgee acquires no right or interest in the goods so pledged in excess of the value of the goods, documents, or security, when so delivered or transferred in exchange.

Consignments.—Where the owner of goods has given possession of the goods to another person for the purpose of consignment or sale, or has shipped the goods in the name of another person, and the consignee of the goods has not had notice that such person is not the owner of the goods, then the consignee, in respect of advances made to or for the use of that person, has the same lien on the goods as if that person were the owner of the goods, and may transfer any such lien to another person. But nothing in the foregoing is to limit or affect the validity of any sale, pledge, or disposition by a mercantile agent.

Dispositions by sellers and buyers.—Where a person, having *sold* goods, continues, or is in possession of the goods or of the documents of title to the goods, the delivery or transfer by that person, or by a mercantile agent acting for him, of the goods or documents of title under any sale, pledge, or other disposition thereof, or under any agreement for sale, pledge,

or other disposition thereof, to any person receiving the same in good faith and without notice of the previous sale, will have the same effect as if the person making the delivery or transfer were expressly authorised by the owner of the goods to make the same. And where a person, having *bought* or agreed to buy goods, obtains, with the consent of the seller, possession of the goods or the documents of title to the goods, the delivery or transfer by that person or by a mercantile agent acting for him of the goods or documents of title, under any sale, pledge, or other disposition thereof, or under any agreement for sale, pledge, or other disposition thereof, to any person receiving the same in good faith and without notice of any lien or other right of the original seller in respect of the goods, will have the same effect as if the person making the delivery or transfer were a mercantile agent in possession of the goods or documents of title with the consent of the owner. And this would be so even if the buyer were in possession of the documents of title to the goods, on the condition, which he had not fulfilled, that he should accept a bill of exchange for their price. In this connection reference should be made, with regard to certain circumstances, to the article on the HIRE-PURCHASE system, and to that on STOPPAGE IN TRANSITU.

Generally.—For the purposes of the Act the transfer of a document may be by indorsement, or where the document is by custom or by its express terms transferable by delivery, or makes the goods deliverable to the bearer, then by delivery. Nothing in the Act authorises an agent to exceed or depart from his authority as between himself and his principal, or exempts him from any liability, civil or criminal, for so doing. Nor does the Act prevent the owner of goods from recovering them from an agent or his trustee in bankruptcy at any time before the sale or pledge thereof; or prevent the owner of goods pledged by an agent from having the right to redeem them at any time before the sale thereof, on satisfying the claim for which the goods were pledged, and paying to the agent, if by him required, any money in respect of which the agent would by law be entitled to retain the goods or the documents of title thereto, or any of them, by way of lien as against the owner, or from recovering from any person with whom the goods have been pledged any balance of money remaining in his hands as the produce of the sale of the goods, after deducting the amount of his lien. Or prevent the owner of goods, sold by an agent, from recovering from the buyer the price agreed to be paid for the same, or any part of that price, subject to any right of set-off on the part of the buyer against the agent. *See* AGENCY; FACTORS; SALE OF GOODS.

FACTORY CHILDREN AND THEIR EDUCATION.—*Attendance at school of children.*—The parent of a child employed in a factory or workshop must cause that child to attend some recognised efficient school in accordance with the provisions of the Factory and Workshop Act, 1901. The parent may himself select the school which his child is to attend; the attendances, however, must comply with the following regulations:—(*a*) The child, when employed in a morning or afternoon set, must in every week, during any part of which he is so employed, be caused to attend on each work-day for at least one attendance; and (*b*) the child, when employed on the alternate day system, must, on each work-day preceding each day of employment, be caused to attend for at least two attendances. An attend-

ance for the foregoing purposes is an attendance as defined for the time being by the Home Office, with the consent of the Board of Education, and must be between the hours of 8 A.M. and 6 P.M. But it is provided that:—(i) A child shall not be required to attend school on Saturday or on any holiday or half-holiday allowed under the Act in the factory or workshop in which the child is employed: (ii) The non-attendance of a child is to be excused on every day on which he is certified by the teacher of the school to have been prevented from attending by sickness or other unavoidable cause, and when the school is closed during the ordinary holidays, or for any other temporary cause: (iii) Where there is not within the distance of two miles, measured according to the nearest road, from the residence of the child a recognised efficient school which the child can attend; then in such case attendance at a school temporarily approved in writing by an inspector, although not a recognised efficient school, will for the purposes of the Act be deemed attendance at a recognised efficient school until a recognised efficient school is established. A child who has not in any week attended school for all the required attendances hereinbefore specified must not be employed in the following week until he has attended school for the deficient number of attendances. Information can be obtained from the Board of Education by all interested persons as to the schools in each school district which are "recognised efficient schools."

School attendance certificate.—The occupier of a factory or workshop in which a child is employed must, on Monday in every week (after the first week in which the child began to work therein), or on some other day appointed for that purpose by an inspector, obtain from the teacher of the recognised efficient school attended by a child a certificate (according to the prescribed form and directions) respecting the attendance of the child at school in accordance with the Act. If a child is employed without that certificate having been so obtained, the child will be deemed to be employed contrary to the provisions of the Act. The occupier must keep every such certificate for two months after the date thereof, if the child so long continues to be employed in his factory or workshop, and must produce it to an inspector when required during that period.

Payment by occupier for schooling.—The persons who manage a recognised efficient school attended by a child employed in a factory or workshop, or some person authorised by them, may (if fees for children can be charged in that school) apply in writing to the occupier of the factory or workshop to pay a weekly sum specified in the application, not exceeding threepence and not exceeding one-twelfth part of the wages of the child. After that application the occupier, so long as he employs the child, is liable to pay to the applicants while the child attends their school that weekly sum, and the sum may be recovered as a debt. But the occupier is entitled to deduct the sum so paid by him from the wages payable for the services of the child.

Child of thirteen with educational certificate.—When a child of the age of thirteen years has obtained from a person authorised by the Board of Education a certificate of having attained such standard of proficiency in reading, writing, and arithmetic, or such standard of previous due attendance at a certified efficient school as is hereinafter mentioned, that child will be deemed

to be a *young person* for the purposes of the Factory and Workshop Act. The standards of proficiency and due attendance are fixed by the Home Secretary, with the consent of the Board of Education, and when so fixed are published in the *London Gazette* at least six months before the time at which they are to come into operation.

And see the article on FACTORIES; and those referred to therein.

FALSE IMPRISONMENT.—For one man to wrongfully, or falsely, imprison another, is for the former, generally speaking, to incur a liability to the other in respect of any damage he may have suffered on account of the imprisonment. And the term "imprisonment" is not confined in its meaning to detention or incarceration in a jail. As a legal term, it includes any total restraint of the liberty of a person for however short a time; but it should be noticed that the restraint must be total. It would accordingly be no imprisonment to prevent any one from leaving a room by the door whilst there remained a French window equally available as an exit; nor to hinder any one from walking in any but one particular direction along a highway. But there would have been an imprisonment in the foregoing cases if the door had been the only means of exit from the room, or if the person hindered from walking in the highway had been in fact forcibly detained thereon against his will. It should also be noticed that in the foregoing illustration of imprisonment in a room, there is no suggestion of any corporal seizure of the person detained. Although the action of false imprisonment is technically based upon an assault, neither an actual physical contact nor a corporal seizure, as between the aggressor or the person imprisoned, is necessary for the constitution of an imprisonment. The test is whether the circumstances of the detention have been such as to effectually and totally restrain the liberty of the person detained; and amongst circumstances which can be effective to that end may be reckoned a show of force or of authority, or of determination to use force. Thus, where a constable said to a man, "You must go with me," whereupon the man said, "I am ready to go," and accordingly went with the constable towards the police station without being seized or touched, it was held to have been an imprisonment. The person who instructs a constable to effect an arrest, even though he does nothing more himself than merely give the instructions, is liable for the consequent imprisonment, and may be sued for damages therefor by the party imprisoned. If the constable, in consequence of that person's instructions or charge, has for one moment taken possession of the person of another, it will be in point of law an imprisonment; for example, if the constable taps that other person on the shoulder, and says, "You are my prisoner," or if that other person merely submits himself into the constable's custody, such would be an imprisonment. But merely to give a man into charge without there ensuing any taking possession of his person, and where nothing more passes than merely the charge, is not by law a false imprisonment. Where a constable made an arrest in consequence of information he had received from a certain person who, at the constable's request, signed the sheet, it was held that such person was not liable in an action for false imprisonment; but he would have been liable if he had signed the charge sheet in consequence of the constable's refusal to detain the prisoner unless he did so.

A person who has suffered a false imprisonment may sue the person who imprisoned him for damages therefor. But a judge of a superior court cannot be sued, even if he has acted oppressively and in perversion of justice; provided, of course, that his act was a judicial one. Nor is a magistrate liable in cases where he acts within his jurisdiction. So long as he has an information before him, he can with impunity issue a warrant; it does not matter that the information does not disclose sufficient ground for the issue of the warrant, or that the facts therein would be inadmissible in evidence. A sheriff or other executive officer would be liable for arresting the wrong man. The damages may vary according to the extent of the suffering caused by the imprisonment. Thus, to be taken through the streets handcuffed to a constable, or to be stripped and searched at the police station, may be good ground for general damages. And for special damages the person imprisoned may claim, for example, the costs he has incurred in obtaining his release, or the actual pecuniary loss he has suffered through the enforced absence from his business. But once he has been brought before a magistrate, the original imprisonment comes to an end, and should the magistrate order a remand, any further imprisonment entailed thereby can be a ground for no part of his claim against the person to whom his imprisonment was originally due. The action must be brought within four years after the time of the cause of action.

Defences.—Where the false imprisonment was in respect of an alleged felony, the general defence available to the defendant in an action against him for damages for the false imprisonment is that of justification. The defendant would be considered to have been justified in arresting, or ordering the arrest of, the plaintiff, in a case where a felony had actually been committed, and there was reasonable and probable cause to suspect that the plaintiff was the person who had committed the felony. If the Court should find that he was so justified, then the plaintiff's action fails. Under various circumstances private persons are specially required by statute to make an arrest where they suspect that a felony has been committed. If an arrest had been made under such a statute, as by a PAWNBROKER for example, the Court would probably have a more liberal leaning towards justification. But justification would be no defence in a case where the offence, in respect of which the plaintiff was imprisoned, amounted only to a misdemeanour; unless, perhaps, it were a case of a breach of the peace committed in the defendant's presence, and under such circumstances as to give rise to an apprehension of a renewal of a breach of the peace. Apart, however, from the question of justification, a defendant is entitled to give in evidence, in mitigation of damages, any facts which tend to reduce the amount of the damages, and could not have been pleaded as a defence. This rule does not of itself give the defendant a right to rely upon the plaintiff's bad character in general; it only allows him to prove material facts which actually, at the time he imprisoned the plaintiff, induced his mind to believe in the plaintiff's guilt.

A most usual line of defence is that the imprisonment was not the act of the defendant, or caused by his authority. We have already shown the circumstances under which such a defence may, or may not, succeed in cases where the plaintiff has been arrested by a constable in pursuance of some

conduct of the defendant himself. But the person who takes the initiative may be only a servant of the plaintiff, and consequently there comes into consideration the question whether that servant had an authority to act as he did, and to make his master liable for the consequences of his action. If the servant had such an authority, his master is undoubtedly liable; but if he had no such authority at all, then his master is not liable. It is not always necessary for the plaintiff to prove an express authority, for it may be that from the circumstances of the servant's general employment, and particularly of his obvious duty at the time of his act, such an authority will be inferred by the law. This question will be discussed and illustrated in the article on MALICIOUS PROSECUTION.

FALSE PRETENCES AND CHEATING.—*At play.*—No person may, by any fraud, or unlawful device, or ill-practice in playing at cards, dice, or other game, or in bearing a part in the stakes, or in betting on the sides of those players, or in wagering on the event of any game, sport, pastime, or exercise, win any sum of money or valuable thing from any other person for himself or any one else. To do so is to become liable to punishment for obtaining that money, or valuable thing, by a false pretence with intent to cheat or defraud. *Obtaining goods.*—It is a misdemeanour to obtain, by any false pretence, any chattel, money, or valuable security with intent to defraud. If, upon the trial of any person indicted for a false pretence, it is proved that he obtained the property in any such manner as to amount in law to a larceny, he is not entitled to be acquitted. But no one tried for a false pretence can be afterwards prosecuted for larceny upon the same facts. It is not necessary to prove an intent to defraud any particular person; it is sufficient to prove that the party accused did the act charged with an intent to defraud. The delivery of the property need not have been obtained personally by the person guilty of the false pretence; it is sufficient if the false pretence caused it to be delivered to any other person, for the use or benefit or on account of the person making the false pretence. It is also a misdemeanour to fraudulently induce, by a false pretence, any person to execute, make, accept, indorse, or destroy the whole or any part of *any valuable security;* or to write, impress, or affix his name, or the name or seal of any other person, company, firm, or society upon any paper or parchment, in order that the same may be afterwards made or converted into, or used or dealt with as a valuable security. A court of *summary jurisdiction* has power to deal summarily with a charge of false pretences (other than that of obtaining credit by false pretences, under the Debtors Act), when the person charged is an adult and he pleads guilty. The extreme punishment it may inflict is six months' imprisonment with hard labour.

Generally.—A false pretence, to be such that it will support a prosecution therefor, must be a false representation as an *existing fact* of some fact which at the time of the representation was not an existing fact. In this way a false pretence may be distinguished from a promise to do an act, or that a thing will exist in the future. The importance of keeping this distinction before a person charged with a false pretence has been recognised by the legislature in a practical manner. It has enacted that where a court of summary jurisdiction propose to deal summarily with a charge of obtaining any chattel, money, or valuable security by false pretences with intent to defraud,

the Court shall, after the charge has been reduced to writing and read to the person charged, state in effect that *a false pretence means a false representation by words, writing, or conduct, that some fact or facts existed, and that a promise as to future conduct not intended to be kept is not by itself a false pretence.* One or two cases will illustrate this distinction. A defendant, who had actually taken premises, and was doing a small business as a coal-dealer, obtained on credit from the prosecutor a number of coal-bags by means of the pretence, which was false, that he had a number of trucks of coal, for which he required the bags, waiting to be unloaded at the local railway station; this was held to be a false pretence within the meaning of the statute. On the other hand, there may be quoted two cases wherein the facts were held not to constitute a false pretence for which the prisoner could be convicted. In the first, the prisoner obtained money from the prosecutor by means of the false pretence that he intended to pay his rent with it, whereas he had no such intention, and in fact did not. In the second, the prisoner obtained some money from the prosecutor upon the false pretence that he was about to marry a certain young lady and wanted the money to pay for a suit which he had just bought for the wedding.

It is not necessary that the representation should be in so many words; it is sufficient to support an indictment for obtaining goods or money by false pretences if there is a false representation by conduct. Thus, to obtain money by means of a cheque upon a banker with whom the prisoner had no account, or knowingly no assets, has been held to be within the definition of the offence; and so has it been found to be, to wrongfully assume the gown and cap of a commoner of the University of Oxford, and thereby to obtain money or goods on credit. But the false pretence must in all cases go to the substance of the contract; if it were otherwise, it is probable that very many commercial advertisements and representations, in these days of often unscrupulous exaggeration, would cause those who proffer them to make a speedy and undesirably intimate acquaintance with the criminal law. To sell a brass ring as gold is to court a certain prosecution; but to sell, if it were possible, the cheapest and least valuable of tea-siftings as good tea is, probably, simply good business. *See* FRAUDULENT DEBTOR.

FALSIFYING NEWS.—It is an indictable offence to knowingly spread, or conspire to spread, any false rumour with intent to enhance or decry the price of any goods or merchandise; so also is it to endeavour to prevent, by force or threats, any goods, wares, or merchandise being brought to any fair or market. The term "goods or merchandise" includes any vendible commodities, the public funds and stocks and shares. It would be an indictable offence to conspire to defraud the public by obtaining, by false pretences, a quotation for shares in the official list of the Stock Exchange. So would it be indictable to conspire to raise the prices of the public funds by false rumours, as being a fraud on the public. And as being a fraud upon those who might thereby have been induced to buy shares in a company, any persons who had conspired to induce would-be buyers of the shares to believe that there was a market for them would be liable to an indictment. This topic is really a part of the larger subject of **conspiracy** which would constitute an indictable offence under various circumstances. For examples, where persons combine: to cause themselves to be reputed persons of means,

with the object of defrauding tradesmen and lodging-house keepers; to defraud by falsely representing the solvency of a bank or any other house of business; or, in view of bankruptcy, to dispose of their goods, or the goods of either of them, in such a manner as to defraud creditors; or to constitute a "knock-out" at an auction. *See* RIGGING THE MARKET.

FARMER has been defined as one who holds a farm, or is tenant or lessee thereof. "And it is said generally every lessee for life or years, although it be but of a small house and land, is called a farmer, as he is that occupieth the farm." The word does not really imply any particular profession or occupation, unless by custom it has come to mean a husbandman. The latter word is the proper description of a person who is usually called a farmer, unless he is entitled to yeoman or higher rank. A farmer is not within the meaning of the statute of Charles II., which enacts that "no tradesman, artificer, workman, labourer, or other person whatsoever shall do or exercise any worldly labour, business, or work of their ordinary calling upon the Lord's Day," &c., and inflicts a penalty recoverable before justices of the peace. It has been decided that a farmer does not come within the expression "other persons." There is no law specially applicable to farmers as such, though some parts of the law would have a peculiar interest for them. The laws relating to infectious diseases, dairies, fertilising and feeding stuffs, horses, landlord and tenants, and agricultural holdings, are examples. So also are those relating to the sale of goods and compensation to workmen for accidents.

FARRIER.—This is the name now usually, and properly, applied to a person whose trade it is to shoe horses. In earlier days the province of a farrier extended to what is now that of the VETERINARY SURGEON. This trade of farriery, like that of an innkeeper or common carrier, is in the nature of a public employment, and the farrier is therefore bound to serve the public in the way of his business. To fail to do so would be to expose himself to an action for damages; but a farrier is not bound to shoe a horse which is brought to him for that purpose at an unreasonable hour. It would seem that a farrier's shop is by law, as in the case of an innkeeper's house, open to all those who care to enter. Any person who, in any street, to the obstruction, annoyance, or danger of the residents, shoes, bleeds, or farries any horse or animal (except in cases of accident), or cleans, dresses, exercises, trains, or breaks, or turns loose any horse or animal, is liable to a penalty not exceeding 40s., recoverable summarily before a magistrate, or to imprisonment in default of payment. A farrier has a specific lien, and so may refuse to deliver up a horse he has shod, unless the money due for the shoeing has been paid or tendered; but the horse can only be so detained in respect of money due for work done at that particular time, for the lien does not extend to any previous account. Whilst so refusing to deliver the horse, the farrier is liable to feed it.

A person who holds himself out as the professor of any special trade or profession, thereby undertakes the duty of performing it properly. A farrier is therefore answerable for his own want of skill, and even for his servant's negligence. He is not liable, however, for any wilful act of his servant, as where the latter maliciously drives a nail into a horse's foot with the intention of laming him. If a third person is affected by the negligence of the farrier,

that person is also entitled to maintain an action against the farrier for damages for breach of duty. In this connection Chief-Justice Coke puts the case of a master sending his servant to pay money for him upon a bond. "On his way a smith in shoeing doth prick his horse, and so by reason of this the money is not paid; this being the servant's horse, he shall have an action for pricking of his horse; and the master also shall have an action for the special wrong which he hath sustained by the non-payment of his money occasioned by this."

In an action brought against the defendant, a farrier, for unskilfulness in the shoeing of two horses sent by the plaintiff to be shod at the defendant's forge, which he carried on for the purpose of shoeing horses with a shoe for which he had a patent, Chief Baron Pollock, in summing up the case to the jury, very fully and clearly laid down the rule of law as to the extent of a farrier's liability in shoeing a horse. "The only rule of law," said the learned Chief Baron, "that I feel it necessary to lay down upon the subject of this case is, that if this operation has been performed unskilfully and improperly, no doubt the defendant is liable to the plaintiff for any mischief that may have resulted from such unskilfulness; but he is liable only to the extent to which mischief has been produced. The rule I take to be this, that a person employed for any purpose must bring to the subject-matter a *reasonable* skill and fitness, and he must exercise that reasonable skill and fitness with *due* and *proper* care. If he be deficient in the requisite skilfulness, and in consequence of that the operation is performed in a bad and bungling manner, or if, having the requisite skilfulness, he fails to bring it to act, he is liable for any mischief which results from that. I need hardly tell you that an operation of this sort cannot be considered in the light of an *insurance*. . . . I observed that one of you asked whether pricking a horse was a frequent accident. I think the answer to that immediate question was, that it was not, at all events, very infrequent; still it may happen without any great degree of unskilfulness attaching to it . . . and although an accident may happen, such as in this case, it may be that the foot of the horse was in such a state that it would be difficult to perform the operation of shoeing. Wherever that is the case, you would naturally expect some information given that there were those defects and difficulties, so that the farrier might be acquainted with the risk he was exposing himself to. You will therefore have to judge whether you think there was any want of skill in the operation of shoeing these horses. I own it appears to me that I think it is impossible to doubt as to the fact that there was an actual pricking. With respect to the man's skill, he may have done it on this occasion badly, they coming to him at night to insist upon the job being done at an irregular hour; that was partly suggested at one time. I must say it appears to me as a question of law, that that is no excuse. If you go to any place, and call in a surgeon or a farrier, or any person to perform an operation, if the time is inconvenient, and if the light be not sufficient, and if the occasion be not suitable, he is bound to say, 'I will not do it.' If he does it, he is answerable, unless indeed he distinctly and explicitly says, 'I do it at your urgent request, *but I will not be responsible* for the consequences.' Nothing of that sort appears to have come from him. On the contrary, though there may have been a remonstrance that the man came too late, yet it was done. It

appears to me in point of law that if a person, called upon at an unseasonable time, undertakes to do it without declaring he will not be responsible, he does it with the same responsibility as if he did it at any proper time."

By a statute of Edward IV. it is provided that if a farrier entrusted with a horse to be shod lends him to another, and the second pricks him in shoeing, an action lies against the first, or the second, in the option of the owner. A horse standing at a farrier's to be shod is exempt from distress.

FELONY AND MISDEMEANOUR.—It is characteristic of the English law that these terms, bound up so intimately as they are with its administration, are incapable of etymological and historical definition. Broadly speaking, a felony is merely a crime of a graver nature than a misdemeanour; it may be fairly stated as one, other than treason and misprision of treason, which until the year 1837 was the subject of capital punishment, and which originally was punishable by attainder and by a total forfeiture of all the offender's lands and goods. But at the present day the nature of the punishment does not determine the question whether or no a certain offence is a felony. The test is whether that offence has been labelled "felony" by the common law or by the statute constituting it a punishable crime. Treason and misprision of treason, it should be noted, are not strictly felonies, for the former stands in a class of its own, and the latter is a misdemeanour. The term "misdemeanour" is applied generally to all those offences for which the law has not provided a particular name and which are punishable according to the degree of the offence by fine or imprisonment or both. In respect of felonies, except those minor ones over which summary jurisdiction has been conferred upon justices of the peace, the accused can only be put upon his trial therefor after an indictment has been found by a grand jury. He must then be tried by a common jury. A misdemeanant may be brought before the common jury by information. Any person who is indicted for a felony or misdemeanour may be found guilty of the attempt to commit the offence with which he is charged; and, generally speaking, except in the case of statutory exception as that of an attempt to commit murder, every attempt to commit a felony or misdemeanour is itself a misdemeanour.

Upon the trial of a felony the jury are sworn individually instead of collectively, as in the case of a misdemeanour; the alleged felon has therefore a right to peremptorily challenge the selected jurors or the whole number of those available for his trial; if a peer, he has the right to be tried by his peers. If any person is charged in the same indictment with two or more felonies, the prosecution can only proceed with one of them, which one they have the right to select. But if the charges in the indictment are only the same offence alleged in different words, the rule does not apply; nor does it apply when the offences charged are excepted therefrom by statute, as in the case of embezzlement, larceny, or receiving, for example. To compound a prosecution for felony, that is to say, to obtain its stay or withdrawal in consideration of some act, reward, promise, or agreement, is itself a misdemeanour and punishable as such; but a misdemeanour may apparently be safely compounded, though any agreement or contract based thereon would be invalid and unenforceable at law. The costs of a successful prosecution for felony will always be borne by the authorities; the person convicted therfor may be ordered to repay the costs

of his conviction; and he may also be required to pay to the person the loss of whose property he has occasioned any amount by way of compensation not exceeding the sum of £100, and the sum so awarded may be recovered in like manner to a judgment debt. It is a grave and punishable offence to conceal a felon from the law, but it is probably no offence to conceal a misdemeanant.

Civil rights.—These may often be very seriously affected by the answer to the question whether a particular crime is a felony or only a misdemeanour. If the crime is a felony it may be taken as a general rule that all civil rights arising thereout against the offender are suspended until he has been first prosecuted. Though a thief who steals money is civilly a debtor to the true owner therefor, yet the latter cannot sue him for its payment until after he has prosecuted him. But this is not really a defence of which the felon can avail himself on his own initiative; it is upon the court before which the action is being tried that the duty rests, of its own motion or on the suggestion of the Crown, to stay proceedings until public justice has been satisfied. The real intent of the rule, however, is to ensure that public justice is done generally. Thus where the plaintiff who claimed to be a creditor for the amount paid by him on a forged cheque had commenced a prosecution for the forgery, but had abstained from proceeding therewith by the direction of the judge who had the forger before him, and who thought that justice would be satisfied by sentencing the prisoner in respect of another forgery to which he had pleaded guilty, it was held that the plaintiff had done enough to satisfy the law, and that his civil remedy had revived. The rule applies, however, even in actions for damages for assault, if the latter is of such a nature as to amount to a felony.

FERRY.—This is the name given to a franchise or exclusive right to expertly carry persons, animals, and goods to and fro across a river, at a certain place, by means of a boat or other navigable conveyance, and to charge a reasonable fee or toll therefor. A ferry can only be created by Act of Parliament, grant from the Crown, or by prescription; and it carries with it an obligation to maintain its service so far as there is actual need for it, and this obligation cannot be fulfilled by building a bridge to take the place of the ferry. A ferryman, although bound to carry all comers, is not therefore a common carrier and bound to convey all classes of animals and goods; but so far as he does carry animals and goods he is a common carrier and liable as such even to the extent of being an insurer; and no notice limiting his liability has any validity except so far as it has been brought to the notice of those for whom he carries. There is nothing to prevent a bridge being built, or any means of transport other than boats instituted, which will draw away custom from a ferry; but if a new ferry is erected on a river near an ancient ferry, so as to draw away custom from the latter, it will be an actionable nuisance, generally speaking, to the owner of the old one. The owner of the old ferry being bound to keep it in repair and readiness for the use of all the king's subjects, it would be extremely hard if the new ferry were to be allowed to share his profits while not sharing his burdens. But because a new ferry diverts some of the traffic from an old ferry, it is not therefore necessarily actionable; and it may be that no action can be maintained in respect of the new ferry if it has been set up *bonâ fide* for the purpose of accommodating a

new and different traffic from that which was accommodated by the old ferry. It is difficult to lay down a principle on this subject. It would seem reasonable to infer, however, that as a ferry is established for facility of a passage, and the monopoly is given to secure convenient accommodation, a change of circumstances, creating new highways, would carry with it a right to continue the line of those ways across a water highway. It is obvious that a single landing-place, which might have sufficed for an uninhabited marsh, would be utterly inadequate for several towns thronged, perhaps, with industrial mechanics. If the public convenience requires a new passage at a distance from the old ferry that makes it a real convenience to the public, the proximity is not actionable.

FERTILISERS AND FEEDING STUFFS.—The sale of these commodities is governed by the Fertilisers and Feeding Stuffs Act, 1906. Any one who sells any article for use as a fertiliser of the soil, and which has been subjected to any artificial process in the United Kingdom, or imported from abroad, must give to the purchaser an invoice as prescribed in the Act. This invoice must state (*a*) the name of the article sold; (*b*) and what are the respective percentages it contains of nitrogen, soluble and insoluble phosphates, and potash. The invoice operates as a warranty by the seller that the actual percentages do not differ from those stated in the invoice beyond the prescribed limits of error. In the case of artificial cattle or poultry food, the invoice must also state certain specified particulars. To fail without reasonable excuse to give the invoice, either on or before, or as soon as possible after the delivery of the article; *or* to cause or permit the invoice or the description of the article sold to be false in any material particular to the prejudice of the purchaser; *or* to sell for use as food for cattle or poultry a substance which contains any ingredient deleterious to cattle or poultry, or to which has been added any ingredient worthless for feeding purposes and not disclosed at the time of sale—is for the seller to incur, on summary conviction, a fine of £20 for the first offence, and of £50 for any subsequent offence. The fine is £20, or imprisonment for six months, in case any person is found, on summary conviction, to have been guilty of knowingly and fraudulently (*a*) tampering with any parcel of fertiliser or feeding stuff in order to procure that any sample thereof taken in pursuance of the Act does not correctly represent the contents of the parcel; or (*b*) tampering with any sample taken under the Act. Full details of this important Act are set out in the Appendix under the same title as this article. *See* ADULTERATION.

FINDING.—The finder of an article has a good title thereto as against all the world, except the true owner thereof. The force of this rule of the law was, probably, on one occasion very thoroughly appreciated by a certain jeweller. Some years ago a juvenile chimney-sweeper, having found a valuable gem, took it to a jeweller for his opinion as to its value. The jeweller, however, thought he saw an opportunity to take advantage of the youth and mean position of the chimney-sweeper and refused to return the jewel, alleging that either one of them had as good a right to it as the other. The chimney-sweeper there-

upon brought an action against the jeweller for the recovery of the jewel, and it was therein held that the finder had such a property as would enable him to keep it against all but the rightful owner, and that the jeweller must give it up. And the finder has no less a property in the article because he may have found it in the public part of a third party's shop; but property found in an inn should be given up to the innkeeper, for he has by law a special property in it. So also should property found on land be delivered up to the landowner, for the owner of land owns everything in it other than precious metals and treasure trove, which belong to the Crown. Should the finder of a chattel afterwards lose it, he will not be liable therefor to the true owner; but should he injure it the true owner can recover damages from him in respect of the injury.

But there is a great distinction between property that is lost and property that is really only *mislaid* under such circumstances that the owner would know where to look for and find it. It is a larceny to fraudulently appropriate property so mislaid, and the fraudulent intent will be gathered from two main facts—(*a*) that, *at the time of the finding*, the finder had means of knowing, as by a mark on the property for example, who the owner was, or even himself then believed that he had such means of knowledge; and (*b*) that, *at the same time*, he intended to appropriate the property for his own use. A man who found a sovereign in the street, and believing that it had been lost thereupon appropriated it, *subsequently* discovered the true owner, but refused to give it up to him; he was held not to have been guilty of larceny. A carpenter who had a bureau given to him to repair found money secreted therein; this he kept and converted to his own use, and as a result was convicted of larceny, and rightly so, as the Court subsequently held. "If a man finds goods that have been actually lost, or are reasonably supposed by him to have been lost, and appropriates them with intent to take the entire dominion over them, really believing when he takes them that the owner cannot be found, it is not larceny; but if he takes them with the like intent, though lost, or reasonably supposed to be lost, but reasonably believing that the owner can be found, it is larceny." The question is not whether the finder could have discovered the owner, but whether he believed that he could have discovered the owner.

FIRE.—It is provided by a Building Act of the reign of George III., which operates throughout the whole of England, that no action shall be maintainable against any person in whose house, chamber, stable, barn, or other building, or on whose estate any fire accidentally begins. The net effect of this Act is simply to remove the *primâ facie* liability of such a person, which had previously been imposed upon him by the common law; it does not in any way exclude him from liability for damage caused by the fire, when such fire is the result of his own criminal act, as in the case of arson. Nor does it remove his liability in any case where the fire has been caused by his intention or negligence, or by that of his servants. The test is whether he has acted as a man of ordinary skill and prudence would have acted, or whether, through his negligence or carelessness, some other person's property has been consumed or damaged by fire. If the fire is the result of arson, it is necessary that the offender should be convicted thereof before the person damaged can sustain a civil action against him. In accordance with

the well-known rule of law laid down in *Fletcher* v. *Rylands*, every person who uses fire upon his premises is under a general obligation to take all reasonable precautions to prevent it spreading beyond them and damaging the property of others. But if that person has a special statutory authority to use the fire, he may be exempt from any liability for the consequences, provided his use thereof was within the restrictions imposed by the authority. But a *railway company* may be liable for damage caused by sparks from its engines, notwithstanding its statutory authority. This is the effect of the Railway Fires Act, 1905, which is dealt with in the Appendix under the title of RAILWAY FIRES. Such sparks would seem to be considered as almost the reasonable and proper accompaniment of railway locomotion, and consequently it lies upon all those who have ignitible property in the vicinity of a railway to take precautions against the possibility of its catching fire. Not to do so is to keep one's property in such a condition as to be a source of danger to others and to be liable for the results. Thus keeping heaps of hedge trimmings near a railway line, in dry weather, so that they caught fire from the sparks of a passing engine, and so caused damage to other property, has been held to be evidence of negligence on the part of the owner of the heaps. But a *traction engine*, which passes over a highway, is liable for accidental fire, for it has no statutory protection against responsibility for the results thereof.

A *pawnbroker* is under a liability for loss or damage by fire to property pledged with him; but a *shipowner* is under no liability at all in respect of damage or loss by fire of any goods he may be carrying. If the *tenant* of a house has covenanted to repair, he must, in every case, remedy or rebuild in case of damage to, or loss of, the premises by fire; but if he has not entered into such a covenant he is only liable in case of damage or loss by a fire arising out of his own negligence. *Factories* in which more than forty persons are employed, and whose construction was commenced after 1st January 1892, are required to obtain a certificate from the local district council that all reasonable means of escape in case of fire have been duly provided; and the same certificate is required in respect of workshops whose construction was commenced after 1st January 1896, and in which more than forty persons are employed. Other factories and workshops, employing more than forty persons, may also be required by the district council to provide facilities for escape in case of fire. *False alarms.*—To knowingly give, or cause to be given, a false alarm of fire to the fire brigade of any town or parish or to an officer thereof, whether by means of a street fire alarm, statement, message, or otherwise, is to commit an offence punishable, on summary conviction, by the imposition of a heavy fine. To make, or assist in making, any fire upon a *highway*, to the injury of the highway, or to the injury, interruption, or personal danger of any person travelling thereon, is to become liable to a fine or hard labour in default of its payment. *See* ARSON; CHIMNEY.

FIRE INSURANCE.—It is remarkable that while marine insurance can trace its history far back into the past, the history of fire insurance is comparatively modern. The risks of the sea would seem to have been always appreciated by merchants, while those of land were ignored and unprovided for until a very recent period. The risk of loss by fire on land does not appear to have impressed itself upon the mind of the public until the time of

the Great Fire of London in 1666, when the community was rudely awakened to a spasmodic effort to provide security against a recurrence of a similar catastrophe. Thereupon was established at Edinburgh, in 1670, a company "for friendly insurance against fire," which consisted of a number of private contributors who agreed to insure each other. There appears, however, to have been some sort of fire insurance in Scotland so far back as the year 1427. In 1680 and 1686 were established two of the earliest fire companies in England, namely, the "Fire Office" and the "Friendly Society" respectively. These offices confined their business to houses only, but, after various vicissitudes, eventually ceased to exist. As soon as the value of fire insurance was once appreciated, many curious efforts were made to extend its advantages; thus, in 1681, the Court of Common Council of London opened books for receiving and entering subscriptions, and arranged that lands and ground rents to the value of £100,000 should be settled as a fund to insure such houses as should be subscribed for—the premium to be 4 per cent. for brick houses and 8 per cent. for timber houses; but in consequence of the want of public confidence in the financial stability of the corporation, a mandamus was issued against the corporation, and the business was abandoned in the following year, the subscriptions being returned.

In 1696 was established, though under another name, the office now known as the "Hand-in-Hand," which enjoys the distinction of being the oldest existing fire insurance company in the world. It insured not only houses, but goods, though upon what facts it established its first rates of premiums it would be difficult to ascertain. It would appear to have then had no capital, nor any security for its losses except its own premiums; but as it was a company for mutual insurance only, the insurers and insured being embarked in one bottom, it was as safe a mode as could be devised of beginning an experiment. It planted the seed from which the now marvellous tree of fire insurance has grown up in England and elsewhere. And following closely thereon, in 1710, was established the Sun Fire Office, a company formed upon the joint-stock plan. In the report of an early insurance case there is the following description of this company's origin: "Some persons observing that great benefit accrued to the public by insurances made in the cities of London and Westminster against losses on houses by fire, but that such insurances did not extend to other parts of England, nor were there any insurances against losses of goods by fire, they formed a society for that purpose." It was thus the first still existing fire company that insured movable goods, such as merchandise and furniture, and from its business so covering a wider ground than any of the preceding companies, it soon became a leading office, and has since, like the Hand-in-Hand, played an active and important part in the history of fire insurance. In addition to the two foregoing societies, reference should be made to the "Westminster," which started in 1717 upon the same principles as the Hand-in-Hand, confining its business entirely to houses, but which, like the latter, flourishes to-day without any such limitation. By the middle of the eighteenth century, fire insurance, which a century before was unknown, had acquired a firm hold in England upon the commercial classes of the community, the "London" and "Royal Exchange" offices having by then been established, and has since extended amongst all classes and through all

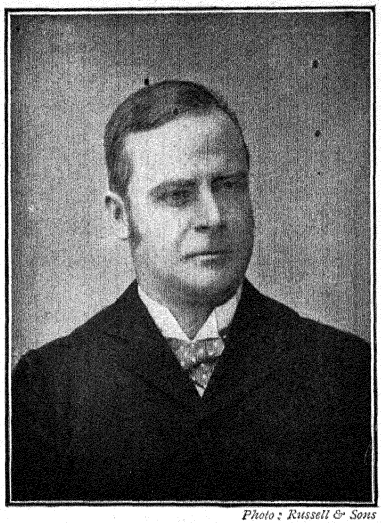

Photo: Russell & Sons

LORD LOREBURN, born 1846, was Solicitor-General 1894, and afterwards Attorney-General, being called to the Bar in 1871. He became Lord Chancellor in 1905. Scottish by descent, his education was English. He was decorated for his services in connection with the Venezuelan Boundary Arbitration Commission.

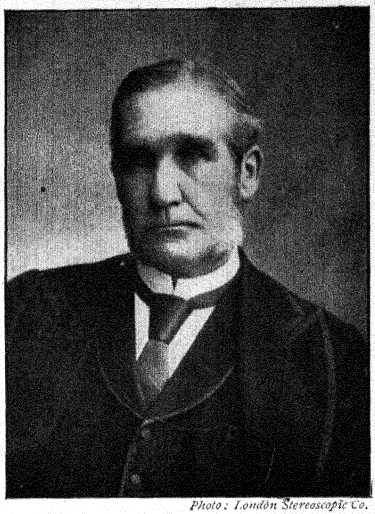

Photo: London Stereoscopic Co.

VISCOUNT WOLVERHAMPTON has been successively Under-Secretary for the Home Department, Secretary to the Treasury, President of the Local Government Board, and Secretary of State for India; is Chancellor of the Duchy of Lancaster. He is a Nonconformist, and father of Miss E. Thorneycroft Fowler, novelist.

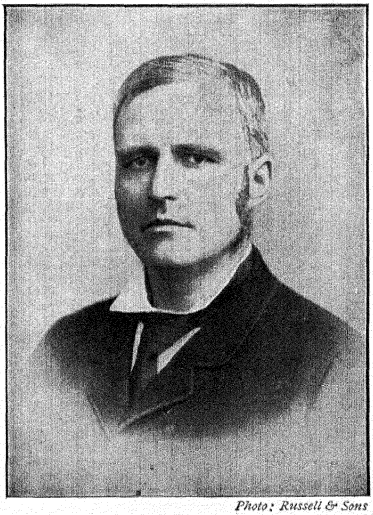

Photo: Russell & Sons

SIR ROBERT BANNATYNE FINLAY, P.C., LL.D., is the son of an Edinburgh physician, and himself graduated in medicine before being called to the Bar in 1867. Solicitor-General 1895-1900, Attorney-General 1900-1906, M.P. Inverness Burghs 1885-1892 and 1895-1906; Lord Rector, Edinburgh University, 1902.

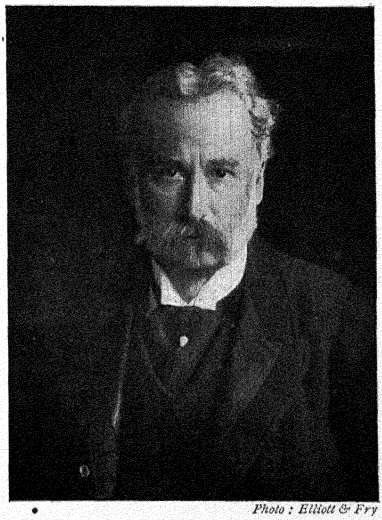

Photo: Elliott & Fry

SIR GEORGE H. LEWIS, born 1833, the well-known Society Solicitor and head of the firm of Lewis & Lewis, has been engaged on one side or the other in nearly every well-known Society law-suit in recent years, including the Gordon-Cumming, Cowley, and Colin Campbell cases. He is of Jewish descent.

civilised lands. And, as is her due as the originator of the practice, England has become to-day the great insuring nation of Christendom.

The nature of fire insurance.—There is a very widespread misunderstanding as to the real nature of fire insurance. To clearly and correctly grasp its nature, it should, in the first place, be noted that the contract of fire insurance is in the nature of an indemnity against loss, and, in the second place, that the contract is not one of insurance of the property, but one of the interest therein of the person insuring. The two foregoing points are comprehended in such a statement of the nature of fire insurance as the following: That it is an obligation to make good to the insured every loss he may sustain from the peril insured against, according to the nature and terms of the contract; and, as a rule, not an obligation to make good every damage that, from the same causes, the property covered may sustain without regard to its ownership. The contract is accordingly one of indemnity, or guarantee, in consideration of a premium paid by the insured, against loss not wilful, from a specified peril, to a given account upon certain subjects. The subject of the indemnity is not the property, but the value of the beneficial interest of the insured in the property. And the person for whom the benefit of the indemnity is created can only be him who may sustain a loss from the peril insured against. The contract of fire insurance is accordingly a strictly personal one.

The subjects and rates of fire insurance.—The prosperity of all fire insurance companies (which must now be constituted in accordance with and carried on subject to the provisions of the Assurance Companies Act, 1909, as set out in the article on INSURANCE COMPANIES in the Appendix) depends very much on a knowledge of what is the average value of the risk of each species or class of property, and this can only be approximated by the widest and most careful statistical inquiry. It is doubtful whether such an inquiry has been made in any country; certainly no such investigations have been made in this department, or such results obtained therein, as have been made and obtained in the department of life insurance. No company can safely undertake a single risk, but it may undertake a thousand with a profit, at a rate based upon the average loss on a thousand risks of like character; nor can it fix an adequate rate of premium to a single risk, though it may, in the light of experience, fix a proper rate to a thousand. Not only is the subject of a fire insurance liable to risks inherent to its special nature, but it is also exposed to ignition from causes not inherent in itself, such as accident and incendiarism. It has been said that all losses by fire must ultimately be borne by the public, the insurance companies being nothing but the machinery for distributing these losses. There has therefore been no other course open to fire insurance companies, in order to ensure their own financial stability, and to maintain their public utility, than to combine, and for each to contribute its own experience to one common fund of experience, wherefrom the most reliable results possible may be obtained. The result of this combination is found in the one fixed tariff of rates which is now adopted by practically all the companies in the United Kingdom. Whether this is always to the advantage of the individual insurer is open to doubt. At least some few pertinent facts are certain: The fire insurance companies show generally a very large profit on their operations; they do not compete with one another for business; they observe

the uniform tariff of rates so strictly as to decline absolutely to accept business on lower terms or on other conditions. There are, however, a few companies that fix their rates independently of the tariff, and do not hesitate to compete with the others; but though, generally speaking, the non-tariff offices are the younger and less well-established, they may very easily be the best resource in particular cases. Fire insurance may also be effected at at Lloyd's, generally on the most favourable terms possible.

The rate payable for an insurance against fire is known as the Premium, and the contract for the insurance is known as the Policy. On *dwelling-houses and furniture* the usual annual premium is 1s. 6d. for every £100 insured. This rate has in view only ordinary private dwelling-houses of brick or stone, with slated, tiled, or metal roofs, and ordinary household goods and furniture, linen, wearing apparel, books, plate, wines and liquors in private use therein. For musical and philosophical instruments and printed music, jewels, watches, clocks, and trinkets in an ordinary private house of the foregoing description, the rate is 2s. 6d. for £100; and for pictures, prints, and drawings, china, glass, and looking-glasses, 4s. 6d. for £100. For furniture generally, *i.e.* including all the foregoing articles in one amount (with the usual limit on any one picture, print, drawing, or article of vertu), in an ordinary private house, the rate is usually 2s. for £100. But for the buildings of non-hazardous *shops* and trade risks, the lowest annual rate of premium would be 2s. for £100, and the rate would increase according to the nature of the goods deposited and of the trade carried on. The shopkeeper or manufacturer may often find it to his advantage to compare the tariff with Lloyd's and the non-tariff offices. The latter will generally reduce the rates in consideration of his special personal character and of the careful way in which he carries on his business. Again, in the tariff offices, a shopkeeper who has a large business and employs a number of assistants is charged a higher rate than is a smaller man; Lloyd's or a non-tariff office, on the other hand, may prefer to deal with a large trader rather than with a small one, and so will not increase the rate of premium in his case. *Farming stock.*—Agricultural produce and dead farming stock, implements and utensils of husbandry, are generally accepted at 5s. per cent. on the usual terms, though live stock is only accepted with such limits as £40 and £100 per head. Insurances for larger amounts per head upon live stock may be effected, in which case a separate amount would be required upon each animal. *Rent.*—An insurance company will also undertake to indemnify insurers against loss of rent they may be liable to sustain in consequence of buildings which they own or occupy being rendered untenantable through damage by fire, the rates for such an insurance being based upon the nature of the building to which it applies. Insurance may also be effected against fire on *shipping* and craft in harbour, or whilst plying on rivers, or whilst in dry dock under repair, or in course of construction; on *merchandise,* in the docks, wharves, and warehouses; on goods held in *trust or on commission,* but the fact must be mentioned in the policy; and on property situate abroad. *Property uninsurable.*—Such property as the following is not usually insured upon any terms: deeds, bonds, bills of exchange, promissory notes, stamps, money, securities for money, books of account, and gunpowder. There should be no extra charge because of electric lighting, provided the installation is carried out in accordance with the rules of the company. It should be seen that losses caused by *lightning,* whether fire ensues or not, are agreed to be made good by the company, and also that the company makes good losses caused by *explosion* of coal gas in a building not forming part of any gasworks, and not being a building in which gas of any kind is manufactured, and also losses caused by the explosion of domestic boilers in buildings occupied solely as private dwellings. A fire insurance company

should also specially agree to pay all reasonable expenses incurred by the insured in removing or protecting the property insured when threatened by fire. In some offices there are systems of *bonus* connected with their insurance against fire. A return dependent on profits is then made in cash, usually whether the insurance is renewed or not, on annual policies at the end of each fifth, and on septennial policies at the end of each seventh year. But no such returns would be made in case of—(*a*) Policies for a smaller total premium than 5s.; (*b*) Policies at a higher rate of premium than 7s. 6d. per cent.; (*c*) Any excess on a policy over the sum retained by the office at its own risk; (*d*) Annual policies under which a claim has been paid. *Septennial policies* are issued on non-hazardous risks only on payment down of six years' premiums for seven years' insurance, and offer the following advantages:—(1) An immediate discount of one year's premium out of the seven; (2) A saving of the trouble of making annual payments; (3) A bonus, dependent on profits, at the end of the term. For example, a policy insuring £5000 on a private house may cost annually £3, 15s., septennially £22, 10s. The bonus expected would, in one office, amount in the former case to one year's premium out of five, viz. £3, 15s. at the end of each fifth year, if no claim has been paid; in the latter £11, 5s., half the premium paid, at the end of each seventh year.

The policy.—The contract of fire insurance is contained in an instrument called a policy, which, though the direct descendant of the old marine policy, contains few of the curious characteristics of the latter. "Insurances from fire," said Lord Hardwicke, "have been introduced in later times, and therefore differ from insurances on ships, because there *interest or no interest* is almost constantly inserted; and if not inserted, you cannot recover unless you prove a property." By the Gambling Act of 14 Geo. III. an insurable interest is essential to a valid policy of insurance, and the names of the persons interested, or for whose account the policy is made, must be inserted in the policy. In a marine insurance all the terms and conditions are usually contained in the policy; in a fire insurance they may be incorporated by reference in the policy to proposals, rules and regulations. In filling up a proposal form and answering the questions therein, the insured must remember that this document will, in effect, constitute a part of the contract of insurance. It may be that a contract for fire insurance would be valid if merely an oral one, but this possibility is rather remote in view of the fact that the statute has made a penny stamp necessary, and thereby excluded, by inference, an oral contract from validity. But an oral contract, followed within a month by a written and stamped one, would be sufficient. Generally speaking, a policy of insurance imposes no obligations whatever upon the insurer, the nature of which would give the company a substantive right of action against the insurer in case of their violation. A breach of any obligations imposed upon the insurer by a policy could only form the ground of a defence by the company in an action against them by the insurer. A policy of insurance should be construed in the sense in which it appears to be intended to be understood; and, generally speaking, no other construction can be put upon it by means of parole testimony. It is usual for a policy to be printed with blanks for the insertion of special matter; where printed and written clauses are inconsistent with each other one of them must give way. And for the reason that the printed words may not express the intention of the parties while the written certainly do, the American courts hold that where the written clause varies from the printed, it is evidence of a special contract made

in a particular case, different from the usual contract of insurance, and must necessarily be considered as the real agreement of the parties. The English courts would probably adopt the same view.

From the point of view of the estimation and proof of the interest of the insured in case of loss, any policy of fire insurance may be said to belong to either one of two classes—it may be an *open* one, or *valued*. The open policy is one which contains no conclusive recognition of the interest of the insured in the subject thereof, and which therefore casts upon the insured the burden of proof of his interest when he claims his indemnity; the term means that the value of the subject of the insurance remains open to inquiry and proof. Insurers of such property as works of art and articles of vertu or curiosity should, in particular, be careful to insure them only by a valued policy. In such a policy there is an agreement, conclusive between the parties thereto, as to the value of the property insured, so that in the event of a loss there is no need for further proof of the value, except in cases of fraudulent over-valuation. But the valuation is only conclusive between the parties to the same policy, and if the insured has protected a portion of his interest in a certain property by one valued policy, and afterwards another portion of his interest in the same property by a second valued policy, the valuation in the one policy does not limit him as to the sum he may recover on the other. The words "*valued at*" are generally the determining expression used in a valued policy. Though largely used in marine insurance, this class of policy is seldom found in fire insurance; it may be safely said that, as a general rule, a tariff company will refuse to undertake a valued risk, but the insurer who desires one should find no difficulty in this respect when dealing with a non-tariff company. A picture worth £100 may be insured for that amount in an open policy, but in the event of its destruction the insurer will be put upon strict proof of its value. A few shillings may be the extent of the offer made to him by the company, and to obtain the proof of its real value may easily cost the insurer a very considerable sum. Cases have been known in which the cost of the proof of value has exceeded the value itself. The valued policy is therefore the most satisfactory to the insurer.

From the point of view of the form of the policy without regard to the subject-matter of the insurance, English policies of fire insurance may be divided into two classes, namely, *specific* and *average*, or *floating*; the normal or *general* form being practically non-existent. A *specified* policy is one that covers one or more subjects in a single place, and is not subject to average. It may be (*a*) literally specific in the sense that it covers only a single subject, or more, in specific sums; (*b*) or more general, in that it covers several different subjects in a single place, under one sum, and is not subject to average. Sub-class (*b*) may be, in effect, an insurance unconfined to single subjects, but limited to single places without average. But to whichever of these sub-classes the specified policy may belong, the apportionment in the event of a loss is simply a matter of the value of the property lost or damaged and of the amount covered by the insurance. The company will pay all the damage sustained without reference whatever to the value of the property, so long as the extent of the loss is within the amount insured and the value of the property is proved. In practice, however,

there is generally an average clause in even a specific policy, especially one of sub-class (*b*).

An *average* or floating policy is one, strictly speaking, that floats over a property situated in different localities. The insured should understand that in its practical working a specific policy is less advantageous to him than a general one. A specific policy is really an insurance of a minimum liability at a maximum premium, while the more general policy is an insurance, based on the opposite principle, on property which is already the subject of specific insurance, and its object is to be ready at any moment to drop into that locality where, by reason of loss, its presence may be necessary to complete the insured's indemnity. It is in effect, by the tacit general consent of the insurance companies, an excess policy, designed to cover any deficiency that may occur in the specific insurance.

The following is a form of specified policy :—

THE BRITISH LION FIRE INSURANCE COMPANY, LIMITED.

THIS POLICY OF INSURANCE *Witnesseth that* , hereinafter called the *insured,* having paid to the BRITISH LION FIRE INSURANCE COMPANY, LIMITED, hereinafter called the Company, the sum of , for insuring against loss or damage by fire, as hereinafter mentioned, the property hereinafter described, in the several sums following, namely :—

(*Description of property :*)

The Company hereby agree with the insured (but subject to the conditions indorsed hereon, which are to be taken as a part of this policy), that if the property above described, or any part thereof, shall be destroyed or damaged by fire, at any time between the 19 , and the 19 , *both inclusive,* or at any time afterwards, so long as the insured, or h— representatives in interest, shall pay to the Company, and they shall accept the sum required for the renewal of this policy, on or before the in each succeeding year, the Company will, out of their capital, stock, and funds, pay or make good all such loss or damage, to an amount not exceeding in respect of the several matters above specified, the sum set opposite thereto respectively, and not exceeding in the whole the sum of .

PROVIDED, NEVERTHELESS, That the capital, stock, and funds of the Company shall alone be liable to satisfy this policy, and that no director or other official signing this policy, nor any trustee, or proprietor, or shareholder of the Company shall be personally liable, whether in body, estate, or otherwise however, to make good, either in whole or in part, any claim or demand whatsoever under this policy.

IN WITNESS WHEREOF, this policy has been sealed with the common seal of the Company, and signed by two of the directors of the Company, and countersigned by the Secretary of the Company this day of 19 , by .

_____ } Directors of the Company. (Seal)

Examined, _____ Secretary, _____

THE CONDITIONS ABOVE REFERRED TO:—

1. Any material mis-description of any of the Property proposed to be hereby insured, or of any Building or Place in which Property to be so insured is contained, or any mis-statement of or omission to state any fact material to be known for estimating the risk, renders this Policy void as to the Property affected by such mis-description, mis-statement, or omission respectively.

2. If, after the risk has been undertaken by the Company, anything whereby the risk is increased be done to Property hereby insured, or to, upon, or in any Building hereby insured, or any Building or Place in which Property hereby insured is contained, or if any Property hereby insured be removed from the Building or Place in which it is herein described as being contained, without, in each and every of such cases, the assent or sanction of the Company signified by indorsement hereon, the Insurance as to the Property affected thereby ceases to attach.

3. This Policy does not cover Property held in Trust or on Commission unless expressly described as such; nor China, Glass, Looking-glasses, Jewels, Clocks, Watches, Trinkets, Medals, Curiosities, Manuscripts, Government Stamps, Prints, Paintings, Drawings, Sculptures, Musical, Mathematical, or Philosophical Instruments, Patterns, Models, or Moulds, unless specially mentioned in the Policy; nor Deeds, Bonds, Bills of Exchange, Promissory Notes, Money, Securities for Money, or Books of Account; nor Gunpowder; nor Loss or Damage by Fire to Property occasioned by or happening through its own Spontaneous Fermentation or Heating, or by or through Invasion, Foreign Enemy, Riot or Civil Commotion; nor Loss or Damage by Explosion, except Loss or Damage by Explosion of Gas in a Building not forming part of any Gas Works, or by Explosion of Domestic Boilers and Domestic Heating Apparatuses.

4. This Policy ceases to be in force as to any Property hereby insured which shall pass from the Insured to any other person otherwise than by will or operation of Law, unless such Policy be assigned or transferred in conformity with the regulations for the time being of the Company.

5. On the happening of any Loss or Damage by Fire to any of the Property hereby insured, the Insured is forthwith to give notice in writing thereof to the Company, and within fifteen days at latest to deliver to the Company as particular an account as may be reasonably practicable of the several articles or matters damaged or destroyed by Fire, with the estimated value of each of them respectively, having regard to their several values at the time of Fire, and in support thereof to give all such vouchers, proofs, and explanations as may be reasonably required, together with, if required, a statutory declaration of the truth of the account; and in default thereof no claim in respect of such Loss or Damage shall be payable until such notice, account, proofs, and explanations respectively are given and produced, and such statutory declaration, if required, is made.

6. If the claim be in any respect fraudulent, or if any false statutory declaration be made in support thereof, or if the fire was occasioned by or through the procurement or connivance of the Insured, all benefit under this policy is forfeited.

7. The Company may, if it think fit, reinstate or replace Property damaged or destroyed instead of paying the amount of the Loss or Damage, and may join with any other Company or Insurers in so doing in cases where the Property is also insured elsewhere.

8. On the happening of any Loss or Damage by Fire to any Property in respect of which a claim is or may be made under this Policy, the Company,

without being deemed a wrong-doer, may by its authorised Officers and Servants enter into the Building or Place in which such Loss or Damage has happened, and for a reasonable time remain in possession thereof, and of any property hereby insured which is contained therein, for all reasonable purposes relating to or in connection with the Insurance hereby effected, and this Policy shall be evidence of leave and licence for that purpose.

9. If at the time of any Loss or Damage by Fire happening to any Property hereby insured there be any other subsisting insurance or insurances, whether effected by the Insured or by any other person, covering the same Property, this Company shall not be liable to pay or contribute more than its ratable proportion of such Loss or Damage.

10. In all cases where any other subsisting insurance or insurances, whether effected by the Insured or by any other person, covering any Property hereby insured, either exclusively or together with any other Property in and subject to the same risk only, shall be subject to average, the insurance on such Property under this Policy shall be subject to average in like manner.

11. If any difference shall at any time rise between the Company and the Insured, or any claimant under this Policy, as to the amount of any Loss or Damage by Fire, or as to the fulfilment or non-fulfilment of any of the conditions herein set forth, or as to any question, matter, or thing concerning or arising out of this insurance, every such difference, as and when the same arises, shall be referred to the arbitration and decision of two indifferent persons, one to be chosen by the party claiming and the other by the Company, or, in case of disagreement between them, then of an Umpire to be chosen by the Arbitrators before entering on the reference; and the costs of the reference shall be in the discretion of the Arbitrators or Umpire, as the case may be, who shall award by whom and in what manner the same shall be paid; and the decision of the Arbitrators or Umpire, as the case may be, shall be final and binding on all parties, and this condition shall be deemed and taken to be an Agreement to refer as aforesaid, and shall be a condition precedent to the right of either party under the Policy.

12. In all cases where this Policy is void or has ceased to be in force under any of the foregoing conditions, or the regulations for the time being of the Company, all moneys paid to the Company in respect thereof will be forfeited.

Premiums.—It is by the payment of the first premium to the company and their acceptance of it that the contract of insurance is created as evidenced by the policy. There is no need for execution of the policy by the insured. The premium must be paid on or before the date specified in the policy in order to effect a renewal of the policy; but the company is under no obligation to accept any further premiums or to renew. Payment within the specified days of grace is sufficient, even if a loss has occurred since the actual due date and before such payment. The payment of the premium during the currency of the days of grace cannot be refused by the company if a loss has occurred. In the case of *Salvin v. James*, Lord Ellenborough, in giving judgment, said that the effect of the provision for days of grace is to give the parties an option for the number of days specified wherein to continue the contract or not, with the advantage on the part of the insured, that if a loss should happen during those days, though he have not paid his premium, the office shall not after such loss determine the contract, but that it shall be considered as if it had been renewed. "But this does not deprive

them of the power of determining the contract at the end of the period for which the insurance was made. Where the premium is received the effect of it is to give the assured an assurance for another year, to be computed from the expiration of the first policy, and not from the expiration of the following fifteen days. The office cannot determine the policy after the year during fifteen days of the following year in case a loss should happen during that period. But the office has the power at any time during the year of saying to the assured, we will not contract with you again, we will not receive from you the premium for another year; and by such declaration the object would cease for which the fifteen days were allowed, and as no premium would be in such case received, no indemnity could be claimed in respect of it. The consideration for the indemnity during the fifteen days is the premium which *must be paid* during that period, but when that cannot be any longer looked to or expected, the right to the indemnity determines also."

A receipt for a renewal of premium by an agent of the company with power to receive such premiums will bind the company as effectively as a receipt upon payment to the company direct; and so will a receipt from an agent for a first premium operate as a valid insurance where the agent is a general agent with power to effect insurances. A plaintiff employed a broker to effect an insurance against fire upon certain goods, and the broker instructed an underwriter accordingly, who prepared and initialled a slip containing particulars of the risk. Owing to a misunderstanding, to which the plaintiff was no party, the policy was not executed. The goods, however, suffered damage by fire, and two days after the plaintiff paid the premium to the broker, but upon application the underwriter refused to execute a policy or to pay the amount for which he had initialled the slip. In an action to recover the amount, it was held that the slip formed a complete and binding contract of insurance, that it was not subject to an implied condition that a policy should be put forward for signature within a reasonable time, and that, in the absence of circumstances showing an intention on the part of the plaintiff to abandon the insurance, he was entitled to recover. In a case where the policy contained the following clause:—"It is part of this contract that any person other than the assured who may have procured this insurance to be taken by this company, shall be deemed to be the agent of the assured, and not of this company in any circumstances whatever, or in any transaction relating to this insurance," it was held that the broker who effected the insurance for the insured, and received the premium, and had frequently effected other insurances with the company, deducting his commission from the premiums and handing over the balance, was the agent of the company to receive the premium. The following case relating to a loss before payment of a premium should be noted. In a policy against loss by fire, running from half-year to half-year, the insured agreed to pay the premium half-yearly "as long as the insurers should agree to accept the same," within fifteen days after the expiration of the former half-year; and it was also stipulated that no insurance should take place till the premium was actually paid; a loss happened within fifteen days after the end of one half-year, but before the premium for the next was paid. It was held that the insurers were not liable, though the insured tendered the premium before the end of the fifteen days, but after the loss.

Insurable interest.—Ever since the memorable decision of Lord Mansfield in the case of gambling policies on the sex of Chevalier d'Eon, putting an end to wager policies, and since the before-mentioned Gambling Act, the law has been well settled that an insurable interest is a condition precedent to all insurance, and that the interest must be at risk. An insurable interest need not necessarily amount to a legal ownership of the property insured; it is sufficient if the interest has a value that may be pecuniarily computed, and is of such a nature that it may be destroyed, lost, damaged, diminished, or intercepted directly by the risk insured against. Both mortgagor and mortgagee have an insurable interest in the property mortgaged; and so have both the pledgor and pledgee of a chattel. And the value of the subject of the pledge alone limits the extent of the insurable interest, for a pledgee is under an obligation to return the security undamaged and undiminished in value. And so a purchaser of goods has an insurable interest therein even though he has not obtained delivery, the only condition being that the contract of sale is such as to leave them at his risk. A trustee may insure the property he holds on trust; and if the beneficiaries are infants he is, by statute, expressly authorised to do so. No one has an insurable interest in a possible legacy or devise from a living person, but there would be such an interest in a settled reversion upon his death. And, generally speaking, any person has an insurable interest in property of which he has the rightful possession and use, and which he is under an obligation to deliver up. Thus a lessee, a yearly tenant, or even a tenant-at-will, may insure the premises to which he stands in such relation; and if the landlord should insure them, but the tenant pay the premium or any part of it, the latter has an interest in the policy. A common carrier would have an insurable interest in the goods he carries to the extent of the stipulated hire, or to such further extent as his liability for their safety may, under any special circumstances, extend; and a special bailee or an innkeeper to the full value of goods entrusted to him. A wharfinger or warehouseman having, as a rule, only a lien upon goods in his possession to the extent of his charges, and his liability for the safety of the goods not generally extending so far as that of a common carrier, he has, to the extent of this lien, an insurable interest therein; but if he adds to his character of wharfinger or warehouseman that of a carrier, the extent of his insurable interest will increase accordingly. To sum up: if a man has a legal or equitable ownership in, or lawful possession of, a property, the destruction, loss, or damage of which will be a detriment to him, he has an insurable interest in that property to the extent of all possible loss. Thus if he owns a rent of £10 issuing for ten years out of certain premises; or if he holds in his possession property of another worth £100, under such conditions as to be under an obligation to deliver it up, or if it should be destroyed by accidental fire, to pay its value, he has insurable interest in the rent or property to the extent of £100. In the case of the rent he would have a further interest in the property out of which it issues, and which is, in effect, the security for its payment.

An insolvent has been held to retain an insurable interest in goods concealed from his creditors; and a husband in goods settled to his wife's separate use, they residing together and sharing in the use of the property. Mr. A. took out a policy against fire in which he was described as a corn and flour

factor; the policy was on goods in his warehouses, and on "*goods in trust or on commission* therein," and the contract was that the insurance company would make good any damage by fire to the property insured. Now A. was also a wharfinger and warehouseman, and had in his custody as such goods belonging to his customers, and on these goods he had a lien for his charges but no further interest of his own. He did not charge his customers with the insurance, nor did they know of its existence. His warehouse and all the goods therein having unfortunately been destroyed by fire, the company paid the value of his own goods, and the amount of his lien on his customers' goods, but refused to pay the value of the customers' interest in the goods beyond the amount of the lien. But upon A. suing the company, it was held that he was entitled to recover the full value of the customers' goods, as they were held by him in trust within the meaning of the policy. An insurance of goods would be sufficient to cover the interest of carriers in the property under their charge; for, in general, if the subject-matter of the insurance is rightly described the particular interest in it need not be specified.

The conditions.—An insured should always pay special attention to the conditions indorsed on his policy; indeed, he should consider them before he effects his insurance. But should he commit such a breach of the conditions as to entitle the company to avoid the policy, that breach may be waived by an acquiescence therein, as for example by the company accepting a premium after notice of the breach. The objects of the conditions are to ensure a specific statement of the protection afforded by the policy, and a full disclosure of the risk undertaken. They also provide for the settlement of claims.

One of the most important conditions is that which is first set out above. This condition deals with any misrepresentation which the insured may have made in order to obtain the insurance. Such a misrepresentation may occur in a material misdescription in the proposal of the property intended to be insured, or of the place which contains it, or in a misstatement of, or omission to state, any fact material to be known for estimating the risk. Its effect is to render the policy void as to the property affected thereby. It will be noticed that the misrepresentation must be as to a material fact in order to avoid the policy; if the fact is not material, the misrepresentation will not have that effect. This class of misrepresentation is closely allied to fraud; so much so that if no fraudulent intent can be shown, it is probable that a misrepresentation which does not materially change the risk would be allowed to pass if it were merely the result of a mistake or inadvertence, and not of design. Fraud will not be presumed, and fraud without damage, or damage without fraud, will give no cause of action. But as insurance is a contract of a peculiar nature, "entirely on speculation," and requiring the utmost good faith in all parties, the slightest fraud is usually sufficient to defeat it; and anything that the law deems fraudulent, or to savour of fraud, will produce that result; so that it does not avail the insured that a *suppression of the truth* happened through mistake or ignorance, without fraudulent intent, so long as the insurance company is in fact deceived thereby. But merely suspicious circumstances will not by themselves establish fraud. A judge in the United States has said that insurance "is part of the estimated security of commercial wealth,

and while, on the one hand, fraud or trick or artifice on the part of the insured should be reached with fair and industrious scrutiny, and visited with stern condemnation, yet, on the other hand, surmises and guesses and intimations of suspicion, or of that which you won't call by its right name, is a very dangerous process of reasoning on a case of insurance." In effect, good faith forbids either party, by concealing what he privately knows, to draw the other into a bargain from his ignorance of that fact and his believing the contrary. The question therefore must always be, whether there is, under all the circumstances at the time the policy is issued, a fair representation, or a concealment fraudulent or designed, or though not designed, varying materially the object of the policy and changing the risk understood to be run.

Some cases of misdescription.—A tradesman, who was not a linen-draper, insured his "stock-in-trade, household furniture, linen, wearing apparel, and plate" against fire, but it was held that this insurance did not protect linen drapery goods which he purchased after the policy had been issued; the word "linen" was confined in its meaning to household linen. A lodger in one room described that room (in which his goods were kept) as his dwelling-house, and though the insurance company contended that the conditions of insurance required the house or place wherein the goods were kept to be "truly and accurately described," the Court held that the lodger's description was sufficient, as the condition related to the construction of the house and not to the interest of the parties in it. Describing an agricultural building as a barn, which in fact it was not, has been held not to invalidate the policy, as the building would have paid the same premium if it had been more accurately described. But where a mill was insured as belonging to a certain class, whereas it was in fact a mill of quite another class, the company were held not to be liable on the policy, on the ground that the building they insured was really one other than that actually existing. The case of *Bufe* v. *Turner* is a leading one on the question of representation of the condition of the premises insured. In that case the plaintiff, having one of several warehouses next but one to a boat-builder's shop which took fire, on the same evening as the occurrence of that fire and after it was apparently extinguished, gave instructions by a letter sent in an unusual way for insuring that warehouse, his others remaining uninsured, but did not inform the insurance company of the neighbouring fire. The neighbour's fire having broken out again on the next day but one following, and consumed the warehouse he had just insured, he claimed payment under the insurance. But he failed to obtain judgment; for although the terms of the insurance did not expressly require information as to the neighbour's fire, yet the concealment was held to be material, although without fraudulent intent.

Condition No. 2 is one to which the insured should always have regard during the continuance of the insurance. Where during the period of insurance an insurer altered the house insured by adding to it a storey, the company was held not to be liable, although the alteration did not increase the hazard or probability of fire, except so far, if at all, as the increase of the area of the building by another storey may be considered to have necessarily increased such hazard or probability. The description of the property in the proposal for the insurance is in effect a warranty, not only

that the property is as described at the time the description is given and at the date of the policy, but also that it will not be altered by the insured so as to increase the risk during the period that the policy is in force. But the alteration contemplated by the condition is not a merely isolated one, or a single instance of departure from the original state of things, but one which has some permanence of character. Thus to dry bark on merely one occasion in a kiln insured as used only for drying corn, a less dangerous operation, will not vitiate the policy. Where a fire policy insured specifically certain ricks of hay actually in the hay-yard of the insured at the time the insurance was effected, it was held that the policy only extended so far as to cover a loss of hay so actually in the yard at such time. And if the policy insures certain goods, agricultural machines for example, then being in a certain place, and provides that the risk shall cease if they are removed without consent, the insurance cannot be recovered if the fire occurs to them when in some other place. In such cases, however, the policy will be reasonably construed. Where for example the insurance is upon horses in a specified place, or upon other property which may be expected in the ordinary course of events to be removed at different times from place to place, the policy does not altogether cease to have effect upon the first or any subsequent removal; its operation is merely suspended until their return to the specified place.

Condition No. 4.—Policies of insurance against loss or damage by fire are not in their nature assignable; nor can the interest in them be transferred from one person to another without the express consent of the office. It is necessary that the party injured should have an interest or property in the house or goods insured at the time the policy is made out, and also at the time the fire happens. From this it follows that if, for example, after the lease of his house has expired, the insured assigns his policy thereon to his landlord or successor, the policy will not oblige the office to make good any loss to the assignee. It should be remembered that an assignment of a fire policy, even with the consent of the office, cannot transfer any rights thereunder unless the assignee also acquires an insurable interest in the property the subject of the insurance. Where the policy has become in effect transferred by will or by operation of law, as in the case of a bankruptcy, the person upon whom it has devolved should at once give notice of the change to the office.

Conditions 5, 6, 7, 9, and 10 are the subjects of discussion in such articles as ASSESSMENT, AVERAGE, CONTRIBUTION, and SUBROGATION; and generally as to *Condition* 11, which is so wide as to almost altogether oust the jurisdiction of the courts in all disputes connected with the insurance, reference should be made to the article on ARBITRATION. An arbitration is a condition precedent to bringing an action on the policy. It may be said that *Condition* 8 is one practically inherent in the contract of insurance; but even when expressly contained in a policy it cannot authorise a forcible entry, nor can the insured be prevented access to the salvage. Unless, however, the company absolves the insured from the obligation, he is bound, notwithstanding this condition, to take proper care of the property that has suffered the loss. If the insured is not insured to the full value of the property damaged, he is entitled to the salvage after he has received payment of the insurance; but this would not be so if his insurance

covers a total loss. Should the company remain too long in possession of the salvage, whereby damage is suffered by the insured, the latter has an action for the amount of such damage. To refer again to *Condition* 5, and particularly with regard to the limitation for notice of fire contained therein, and in connection with the subject of **notice of fire** generally, as dealt with on p. 100 of Vol. I., it should be noticed that the condition before us that *proof of loss* should be produced "in fifteen days at latest," really amounts to nothing, for the only penalty for failure—as will be seen at the end of the clause—is that the loss or damage shall not be payable until such notice, proofs, &c., are produced, whenever that may be, there being no limitation as to the time in which the loss is payable. The point is that the particulars must be delivered before a claim can be made.

Extent of protection.—It commences directly the policy is issued; and in the absence of a provision that the policy is not to attach until payment of the premium, such a provision will not be implied by the law. It ends only at midnight of the day upon which the policy terminates, and any loss incurred during that day before that hour would be covered. But see above as to the days of grace. The burning of a house by a mob would not be within a proviso in a policy which provides that there shall be no liability in case the house is burnt by reason of any invasion, foreign enemies, or any military or usurped power. The usual form of policy accordingly adds to the proviso: "riot or civil commotion." Damage caused by heat merely, without any firing of the property, is not usually covered by a policy; nor by the explosion of gas, unless the gas is ordinary illuminating coal-gas. A well-known authority has laid it down that fire produced by the friction of a wheel on its axle, which consumes the wheel, is a loss of the wheel by fire. But the burning of a barrel or other vessel containing quicklime which is accidentally submitted to the action of water, would be a loss by fire only as regards the vessel, and not as regards the spoilt lime. The spoiling or consuming of any two chemical fluids by process of combustion would not be a loss by fire as to either of the substances, but it would be so as to any third body. A hayrick which takes fire by its own heat, produced by vegetable fermentation, would not be strictly a loss by fire as to the vegetable collection itself, but it would be so as to surrounding bodies. It is sometimes a question whether the damage is too remote from the cause to be such as the company is liable for. Thus where premises insured against loss or damage by fire were so shaken by an explosion of gunpowder at the distance of half a mile therefrom, that the windows were broken and other damage sustained, it was held that the loss was not a damage by fire within the extent of the policy. And on the same principle a company would not be liable for damage caused by smoke or heat not the effect of actual ignition. Thus the consequences of a smoking lamp or chimney would not give rise to a valid claim; nor would such a case as the fracture of glass caused by the overheating of a room, or by its too close proximity to a fire or lamp.

Assignment of property.—A purchaser of property insured against fire does not by the mere fact of the purchase acquire a right to the insurance moneys; he should either himself reinsure or obtain an assignment of the policy. This should be always remembered by purchasers of real property,

for in the well-known case of *Rayner* v. *Preston* a house which had been insured by the vendor was, after the date of the contract for sale but before the completion of the purchase, partly burnt down, and the vendor received the insurance moneys, there being no provision in the contract as to insurance. It was held that the purchaser, as against the vendor, could not recover the insurance moneys either as an abatement of his purchase-money or for the reinstatement of the premises. But under such circumstances as the foregoing, the insurance company could compel the vendor to refund the money they had paid to him if he should receive the whole of his purchase-money from the purchaser; and in some cases the company might be held to be trustees of the money so refunded for the benefit of the purchaser. And on the same principle, an insurance of a trader's stock will not cover such part thereof as may have been actually sold to customers at the time of the fire, even though it had been left on the trader's premises for the customer's convenience. In such a case, notwithstanding any condition in the policy that it is an insurance on "merchandise the insured's own, in trust, or on commission, for which he is responsible," the company would not be liable, for the trader is not responsible for the goods of his customers so left, such goods having been kept at the customer's risk. Once the property in goods sold has passed to the purchaser, or by the contract of sale lie at the purchaser's risk, the insurance company is absolved from liability, and the purchaser is not even entitled to the benefit, by way of set-off or counter-claim, of any part of the insurance money received by the sellers. Under the terms of a certain lease the landlord covenanted to insure, and the tenant had an option to purchase the premises at a fixed sum; but before the time for exercising his option, the premises were burnt down and the landlord obtained payment of the insurance money. Upon this the tenant exercised his option and claimed payment to him of the insurance money as part of the property purchased. The courts, however, refused the claim. A tenant cannot compel his landlord to expend money received from an insurance office, on the demised premises being demolished by fire, in rebuilding the premises; nor can he restrain the landlord from suing for the rent until the premises are rebuilt; nor can he even urge as a defence, to an action by the landlord for use and occupation of the premises, that he had not himself insured the premises because he had relied upon the insurance effected by the landlord.

Generally.—An insurance company, upon payment of a loss, is entitled to stand in the place of the insured as between him and third parties, and to recover from him the value of any rights or remedies relating to the subject-matter of the insurance, and receivable from the third parties, which he may have renounced, and to which but for the remuneration the company would have been entitled. The burden of proving that a fire was the act of an incendiary rests upon the company; it is sufficient for the insured to merely prove the loss by fire. The negligence of the insured is not, generally speaking, a defence to an action on a policy of insurance against fire; in fact a policy is usually an indemnity against such negligence. And should the wife of the insured feloniously set fire to the property this will afford no answer to a claim against the insurance company, unless the insured was privy to his wife's act. *See* also INSURANCE AGENTS.

FIRST OFFENDERS.—Provision is made, by the Probation of First

Offenders Act, 1887, for cases where the reformation of persons convicted of first offences may, by reason of the offender's youth or the trivial nature of the offence, be brought about without imprisonment. The Act applies to any case in which a person is convicted of larceny or false pretences, or any other offence punishable with not more than two years' imprisonment before any court, and no previous conviction is proved against him. If it appears to the Court that it is expedient to release the offender on probation of good conduct, the Court may, instead of sentencing him at once to any punishment, release him on his own recognisance, or with sureties, to appear and receive judgment when called upon, and in the meantime to keep the peace and be of good behaviour. In thus acting the Court should have regard to the youth, character, and antecedents of the offender, to the trivial nature of the offence, and to any extenuating circumstances under which the offence was committed. Before so directing the release of an offender, the Court must be satisfied that the offender, or his surety, has a fixed place of abode, or regular occupation, in the county or place for which the Court acts, or in which the offender is likely to live during the period named for the observance of the conditions. It may also direct the offender to pay the costs of the prosecution, or part thereof, by instalments or otherwise. If satisfied by information on oath that the offender has failed to observe any of the conditions of the recognisance, the Court may issue a warrant for his apprehension. Upon apprehension he may be remanded in prison, or on bail, until the time at which he was required by his recognisance to appear for judgment, or until the sitting of a court having power to deal with his original offence. *See* YOUTHFUL OFFENDERS.

FISH DEALERS.—Any medical officer of health or inspector of nuisances may, at all reasonable times, apparently even on a Sunday, inspect and examine any fish exposed for sale, or deposited in any place for the purpose of sale, or of preparation for sale, and intended for the food of man. If any such fish appears to him to be diseased, or unsound, or unwholesome, or unfit for the food of man, he may seize it and carry it away in order to have it dealt with by a magistrate. If it appears to the latter to be diseased, or unsound, or unwholesome, or unfit for the food of man, it will be condemned and destroyed, or so disposed of as to prevent it being exposed for sale or used for the food of man. The person to whom it belongs, or did belong at the time of exposure for sale, or in whose possession or on whose premises it was found, is liable to a penalty of £20, or, at the discretion of the magistrates, to imprisonment for three months. It rests upon the party charged to prove that the fish was not exposed or deposited for the above-mentioned purposes. *Fried fish.*—The retail trade in fried fish is not in itself a noxious and offensive trade, and consequently the trader cannot generally be restrained from carrying on business as such. But an injunction can be obtained against him if he has covenanted in his lease not to carry on "any offensive trade or business whatsoever" upon his premises, and he has in fact carried on his business in such a manner as to create an offence to the public. So if the odour arising out of his business is offensive and injurious to his neighbour's premises, the latter can, apart from any question of covenant, obtain an injunction restraining him from allowing the noxious odours to escape. *See* OFFENSIVE TRADES.

FIXTURES.—The term "fixtures" in its common acceptation comprehends hangings, bells, stoves, and other ornaments and furniture; but in its more extended sense it applies to those chattels which have been annexed to the freehold or land, but which may be afterwards severed and removed by the party who has affixed them, or his personal representative, against the will of the owner of the freehold. A fixture is, in effect, a particular exception to the general rule of law that what is fixed into the soil belongs to the soil. But notwithstanding this particular exception in favour of fixtures generally, there yet remains that general rule, and it is therefore necessary to know whether a certain article comes within the scope of the rule or not before it can be classed as part of the freehold or as a fixture. If it is so annexed to the "realty"—the soil, or house, as the case may be—as to thereby become a part and parcel thereof, and to partake of all the incidents and properties thereof, it is not a fixture. In plain English, a "fixture" is that which is strictly speaking *not* a fixture; the moment it becomes a fixture in the bare meaning of the word it loses its separate character of a fixture and becomes identified with and a part of the property to which it is affixed.

Whether an article is a fixture or not may become at times a very important question. Especially would this be so as between landlord and tenant, for if the latter attaches the article to the premises in such a way as to incorporate it with the property, he will thereby lose his ownership therein and must resign it to the landlord at the expiration of his term; had it remained only a fixture the tenant would have retained his ownership, and have been entitled to take it away with him when leaving the premises. And so, if a man owns a freehold estate and attaches a chattel thereto in such a manner as to constitute it a fixture, the estate will go upon his decease to his heir or devisee and the chattel to his next-of-kin or legatee. But if the attachment had constituted an incorporation with the property, the chattels would have thereby become part and parcel thereof and passed to the heir or devisee together with the rest of the freehold estate.

The question therefore arises: What circumstances will constitute such a sufficient annexation of an article as to confer upon it the character of a fixture? The merely laying and resting goods upon land and premises without letting and imbedding them into it will not confer upon them the character of fixtures. And not only to goods does this apply, but also to buildings of whatever description which may be brought upon the land and premises. The goods or buildings must be *fixed in or to the ground or premises*, or to some substance already become a portion of the freehold, in order that they may be deprived of their personal and separate nature and become themselves parcel of the freehold. Thus where a tenant had erected a verandah, the lower part of which was attached to posts fixed in the ground, it was held that he could not remove it. And on the other hand, where a tenant had erected a barn upon the premises and put it upon pattens and blocks of timber lying upon the ground, but not fixed in or to the ground, it was held that he might remove it. And it would seem also that if goods or buildings are merely placed and rest upon, without being let into, a brick or other foundation, and can be taken away without injury to such foundation, they may legally be removed, although the foundation

itself is in a solid manner rendered part of the freehold and cannot be severed therefrom, and was constructed for the express purpose of supporting the superincumbent weight. It may be taken as a proper test as to whether chattels are fixtures or not, whether they can be removed or not without substantial injury to the freehold; this would be a question for the jury. But upon this general rule certain exceptions have been engrafted with reference to the purpose and object for which the article has been annexed to the land. Thus the existence of custom may be introduced into the consideration of the question of fixtures; and so in some cases may the nature of the article affixed, or of the intention of the party in attaching it to the freehold be considered. In particular should be considered whether or not the things were set up for ornament or convenience; for trading purposes or for agricultural purposes. It results, therefore, that no general working rule of law can be laid down; each case must depend upon its own special and peculiar circumstances. This being so, we will give a few illustrative cases.

Ornament or convenience.—The right as between landlord and tenant does not altogether depend upon the principle that the articles continue in the state of goods and chattels, *i.e.* of separate or personal property. Many articles, though originally goods and chattels, yet when affixed by a tenant to the freehold cease to be goods or chattels by becoming part of the freehold; and though it is in his power to reduce them to the state of chattels again by severing them during his term, yet until they are severed they are part of the freehold—as wainscots screwed to the wall, certain grates, trees in a nursery ground, and the like, which when severed are chattels, but standing are part of the freehold. Unless the lessee uses during the term his continuing privilege to sever them, he cannot afterwards do it. A conservatory erected on a brick foundation, but affixed to and communicating with rooms in a dwelling-house by windows and doors, cannot be removed by the tenant; nor can a box planted by a tenant in the garden; nor for example pillars of brick and mortar built on a dairy floor to hold pans, although the pillars may not be let into the ground. Statues and vases specially designed for an ornamental garden and placed upon piers with the view to the enjoyment of the land as a garden, and not with a view to the enjoyment of the various articles considered as works of art, have been held to be annexed to and form part of the land. The following articles have been held to be "tenant's" fixtures, and so removable by him:—chimney-pieces, pier- and looking-glasses, marble slabs, hangings and tapestry, window-blinds, wainscots screwed or nailed to walls, fixed chimney-pieces, cupboards, bookcases, tables, counters, shelves, partitions, gas-fittings, and bells, and grates and stoves fixed to brickwork.

For trading purposes.—The question of the right of a tenant to remove trade fixtures appears to have first come before the courts for decision in the reign of Edward III., in a case in which the tenant's removal of a furnace was contested. After some discussion, however, the question was adjourned by the Court as too doubtful a one, and was accordingly left undetermined. But in the reign of Henry VII. comes the next case relating to trade fixtures, and this too concerned the removal of a furnace—one which was stated to have been fixed to the freehold with mortar. Here the question was

considered by the judges, and it was held that the tenant was entitled to remove the furnace, the Court laying it down that "if a lessee for years set up such a furnace for his advantage, or a dyer make his vats and vessels to occupy his occupation during the term, he may remove them. And so of a baker. And it is no waste to remove such things within the term by some." The last two words should be taken as meaning "according to the opinion of some judges," wherefore the case should not be relied upon too entirely. It is not until the reign of Queen Anne that we come to the beginning of the modern decisions as to trade fixtures. The leading case on the subject in that reign was *Poole's case*, wherein it appeared that a soap-boiler, an under-tenant, had for the convenience of his trade put up certain vats, coppers, tables, and partitions, and had paved the backside, &c., and that all of these things had been taken under an execution against him. If the things had been trade fixtures the sheriff would have been entitled to so take them under execution, but the landlord, contending that they were not fixtures because they had been incorporated with the freehold, brought an action against the sheriff for the damage occasioned to the house. But the Court held that they were trade fixtures; the landlord lost his action, and the fixtures were found to be liable to seizure under an execution against the tenant's goods. Lord Holt held that during the term the soap-boiler might remove the vats he set up in relation to his trade; and, moreover, that he might do so by the authority of "the common law (and not by virtue of any special custom), in favour of trade and to encourage industry." In the case of *Lawton* v. *Lawton* it was decided that a fire-engine or steam-engine erected by the tenant might be removed by him, the judge (Lord Hardwicke) observing that "Some rules are very clear as to what is annexed to the freehold is to be considered as part of it; and yet there are some exceptions to that rule as between landlord and tenant. What is erected by the latter for the sake of trade may be removed though fixed to the freehold."

So also vessels and pipes in brew-houses, cider-mills, salt-pans, vats, coppers, and the like, may be removed by the tenant; and limekilns also seem to be removable. And amongst other things which tenants have been permitted to remove may be mentioned: A varnish-house, having a brick foundation let into the ground, upon which was erected a superstructure of wood, brought from another place where the tenant had carried on his business; and a wooden stable which stood upon blocks and rollers; and also a shed which a tenant had built on brickwork, and posts and rails he had put up. But the mere fact that the buildings are used only for the purposes of trade does not entitle the tenant to remove them if they are substantial erections of brick and mortar having foundations deep in the soil. The whole position is thus summed up in *Whitehead* v. *Bennett*:—"With respect to anything in the nature of machinery, engines, or plant, or things substantial and solid, such as vats, utensils, &c., these are all clearly within the right of removal as between landlord and tenant. In all these cases the things sought to be removed might either be taken away bodily where they are capable of being set up again elsewhere, or if by reason of their bulk or complexity it should be necessary to take them to pieces, they could be put together in the same form in some other place. . . . It certainly may

be metaphysically argued from this that a building of the most substantial and solid character let ten feet into the ground with cement is capable of removal brick by brick and of being put together in another place in the same form, but the common sense of mankind would determine that an engine is a very different thing from a house, although every stone, brick, tile, and chimney-pot might be removed. One, however, is the case of removal of materials, and the other of taking to pieces and restoring to their former state actual portions of the engine."

Where a building is erected as an accessory to a removable fixture it may be that it is equally removable with the thing to which it is incident. In *Wake* v. *Hall*, some miners working under certain High Peak customs lawfully erected machinery and some buildings accessory thereto on surface land of which the miners were entitled to the exclusive use for mining purposes, but the freehold of which belonged to others. The buildings were attached so as to be part of the soil, and so that they could not be removed without some disturbance which would not amount to a destruction of the soil. The buildings were from the first intended to be accessory to the mining, and there was nothing to show that the property in them was intended to be irrevocably annexed to the soil. It was held that the miners were entitled to pull down and remove the buildings while their interest in the mine continued, and were not liable to the surface owners for so doing. Though the facts in this case were somewhat peculiar, yet, in delivering judgment, Lord Bramwell expressed the opinion, if it were necessary to decide it, that the principle on which a tenant may remove trade fixtures would, if the defendants had been tenants, justify the removal of the buildings, and that the defendants could not be in a worse position than such tenants.

For agricultural purposes.—The exemption in favour of trade fixtures, which allows the tenant to remove them during the term, notwithstanding but for the purpose they would have been irremovable, has never been applied by the courts so strongly to annexations for agricultural uses. In the case of *Elwes* v. *Maw* it was held generally that certain structures, which if erected for a trade purpose would have been removable, were irremovable when erected as a necessity and for the convenience of the occupation of a farm. No adjudged case "had gone the length of establishing that buildings subservient to the purposes of agriculture, as distinguished from those of trade, have been removable by a tenant." It is accordingly to statute that reference must be made for any ameliorating exemption in favour of the tenant from the operation of the rule that passes everything incorporated in the freehold to the ownership of the freeholder. And we find that in effect the doctrine of *Elwes* v. *Maw* was abolished by the Agricultural Holdings Act, 1883, sec. 34, and the like Act of 1900, sec. 4.

These Acts, which are now repealed but re-enacted in the consolidating Act of 1908, only apply to fixtures affixed or acquired on or after the 1st January 1884. As to other fixtures, they will either be governed by *Elwes* v. *Maw*, by special agreement, by custom, by sec. 4 of the Landlord and Tenant Act, 1851, or by sec. 53 of the Act of 1875. Subject to the foregoing, where a tenant affixes to his holding any engine, machinery, fencing, or other fixture, or acquires the same, or erects or acquires any building for which he is not, under the Acts or otherwise, entitled to compensation, and which is not so affixed or erected in pursuance of some

obligation in that behalf, or instead of some fixture or building belonging to the landlord, then such fixture or building will be the property of, and be removable by, the tenant before or within a reasonable time after the termination of the tenancy. But (1) before the removal of any fixture or building the tenant must pay all rent owing by him, and perform or satisfy all other his obligations to the landlord in respect to the holding; (2) In the removal of any fixture or building the tenant must not do any avoidable damage to any other building or other part of the holding; (3) Immediately after the removal of any fixture or building the tenant must make good all damage occasioned to any other building or other part of the holding by the removal; (4) The tenant must not remove any fixture or building without giving one month's previous notice in writing to the landlord of the intention of the tenant to remove it; (5) At any time before the expiration of the notice of removal the landlord, by notice in writing given by him to the tenant, may elect to purchase any fixture or building comprised in the notice of removal; and any fixture or building thus elected to be purchased must be left by the tenant, and will become the property of the landlord, who must pay the tenant the fair value thereof to an incoming tenant of the holding; and any difference as to the value is to be settled by a reference under the Act, as in case of compensation, but without appeal.

When tenant may remove fixtures.—The right of a tenant to remove his fixtures continues only, subject to the exceptional provisions of the Agricultural Holdings Acts, during the continuance of his original term, and during such further period of possession by him as he holds the premises with a right to consider himself the tenant thereof. Accordingly a tenant whose term has expired, and who has given up possession of the premises which are occupied by a succeeding tenant, cannot re-enter the premises to sever and remove his fixtures. And so, if he is holding over against the will of his landlord, who declines to recognise him as a tenant, he cannot during that period sever his fixtures. A certain yearly tenant disclaimed his landlord's title, upon which the landlord demanded possession, and served him with a declaration of ejectment on the 8th February. On the 19th February the parties signed the following agreement:—"In consideration of Mr. B. (the tenant) not appearing to this action, I hereby agree not to issue a writ of possession until after the 25th March next." The Court held the meaning of this agreement to be, that the premises should be given up on the 25th March in the same condition as they were in on the 19th February, and that the tenant was precluded from removing in the interval his fixtures which he had put up during his term. If a landlord and tenant agree that the latter may leave his fixtures on the premises after the expiration of his tenancy, with a view to their being taken over by the new tenant, this agreement should be in writing, signed by the landlord, if it contains a clause that the tenant may remove the fixtures if they are not so taken over.

Transfer of fixtures.—Fixtures may be the subject of a gift *by will* separately from the premises to which they are incident, and fixtures may accordingly be disposed of by will where the person having the interest in the premises, as in the case of a life-tenant, has not the right to devise the premises themselves by will. But where a testator wishes to give fixtures separately from the premises to which they are annexed, he should be careful

to use some words describing them that will show what articles he intends the gift to comprehend. The term "fixed furniture" in this connection may be taken as including a wider range of articles than the term "fixtures"; for the former term has been held to include such articles as looking-glasses, which were standing on the chimney-pieces and nailed to the walls, and a bookcase standing on brackets and screwed to the wall. Where a testator bequeathed to his wife all his household furniture, plate, linen, &c., his widow was not allowed to take thereunder what are called tenant's fixtures. The mere word "furniture" will not entitle the legatee to remove the mantel-pieces, stoves, kitchen dressers, and shelves of that kind.

A mortgage of lands and hereditaments, in fee simple, carries with it all the fixtures thereon at the date of the mortgage, and it extends even to fixtures which a tenant can remove as against his landlord. The mortgage may be legal or equitable, need not contain any special words including the fixtures, and the rule also applies to mortgages of leasehold interests whether by way of assignment or subdemise. There is some doubt, however, whether an equitable mortgage of leaseholds by way of security, by mere deposit of title-deeds without a memorandum, will pass the tenant's fixtures. In a mortgage of freehold property, as a general rule, all things which are annexed to the place, whether at or after the date of the mortgage, are part of the mortgage security, and therefore the deed need contain no mention of fixtures. That is so unless a contrary intention can be collected from the deed. It used to be said that a different rule applies when the mortgaged property is not freehold, but leasehold; but there is, in fact, no such distinction. But in the case of a mortgage of leasehold property the mortgagee is only entitled to use the fixtures for a time, and the right to remove them from the freehold remains in the mortgagor until the end of the term. Two exceptions are possible to the foregoing general rule: the first is created by the form of the mortgage, as where two kinds of property are mortgaged, with the fixtures on only one of them, in which case the law will presume that the fixtures were intended to be excluded in the other; the second may sometimes be created by the custom of the place, as for example where the custom is that fixed machinery shall only pass with the mortgage when it can be removed without injury to the freehold.

In considering the subject of a mortgage of business or manufacturing premises it is important to know the effect thereon of the Bills of Sale Acts. In the first place it should be noted that *fixed* trade machinery will pass with the mortgage as fixtures, and without any express words of assignment; this being so, there is no need for express words of assignment of that class of machinery, and registration of the deed as a bill of sale is avoided. Under such a deed the mortgagee is entitled to include the machinery in the property mortgaged when he exercises his power of sale. But if the effect of the deed of mortgage is to confer upon the mortgagee a right to sever that machinery from the premises, and to sell it separately, the deed will be void unless it is in the form required by statute for a bill of sale, and has been duly registered. But an ordinary mortgage deed of premises may assign the trade machinery by express words, and not come within the operation of the Bills of Sale Acts, so long as the power of sale is not divided between the premises and the machinery. *Movable* trade machinery can only be mortgaged by way

of bill of sale, and this applies generally to fixtures of all classes if the mortgage is separate from a mortgage of the premises. The Act of 1878 defines "trade machinery" as machinery used in or attached to any factory or workshop, exclusive of: (1) the fixed motive powers, such as the water-wheels and steam-engines, and the steam boilers, donkey engines, and other fixed appurtenances of the said motive power; and (2) the fixed power machinery, such as the shafts, wheels, drums, and their fixed appurtenances, which transmit the action of the motive powers to the other machinery, fixed and loose; and (3) the pipes for steam, gas, and water, in the factory or workshop. The foregoing three classes of excluded machinery are not personal chattels within the meaning of the Act.

Generally.—Where a tenant in possession takes away articles in the nature of fixtures, his right to do which the landlord does not admit, the appropriate remedy by the latter is an action against the tenant for waste. By means of such an action the question may be determined whether or not the articles are, in fact, fixtures. But if the tenant has covenanted to keep the premises in repair, and so yield them up at the expiration of the term, the landlord should proceed by an action on the covenant. The landlord, or other reversioner to the freehold, is also entitled to an injunction restraining the removal or destruction of fixtures. Thus if a sheriff should proceed to sell any fixtures to which the landlord is entitled under an execution against the tenant in possession, the Court will interfere to protect the landlord and prevent the sheriff selling. But in such cases the Court requires to be first satisfied that the fixtures are actually affixed to the freehold. Where the tenant of a certain mill and machinery severed the machinery from the mill without his landlord's permission, and the machinery was afterwards sold under an execution against the tenant, the landlord was held to be entitled to proceed against the purchaser. *See* LANDLORD AND TENANT.

FLATS.—A flat has no precise legal definition, but it may be taken as the name generally descriptive of a suite of rooms, part only of a house, complete in themselves for all ordinary household requirements, and designed so as to be in fact separate from and exclusive of the rest of the building. It is not necessary that all rooms should be on one floor, or that they should by themselves occupy the whole of a floor; but the rooms of a flat should be all in communication one with the other, and together separated from the remaining residential portion of the house. The law relating to flats is simply a special chapter in the law of landlord and tenant, its chief characteristics being those which naturally arise from the peculiar construction of flats, and from their relation one to the other and to the whole building of which they are a part. The fact of the landlord supplying meals and retaining control of the common front door does not reduce the tenant's position to that of a lodger or boarder. The necessity for a lease to be in writing or by deed is the same in the case of a flat as of land or houses, no more and no less. If the tenant desires the general character of the whole building to be maintained during his tenancy, the agreement should provide for it. In the absence of such provision, the tenant could not obtain an injunction restraining the landlord from altering the general scheme of the building and merely disturbing his privacy (*Browne* v. *Flower*); but if the alteration were seriously prejudicial to the value of the flat, so as to render it unfit for its purpose, the tenant would be entitled to damages therefor from his landlord. If

the action of the landlord in this respect were such as to, in effect, create a nuisance, then it is probable that the tenant could obtain an injunction. To alter the basement of a block of high-class residential flats for the purpose of substituting the business premises of a restaurant for a residential flat, would be an act which the Court would be likely to restrain.

The tenant of a flat has been said to be released from his tenancy by the destruction by fire of the flat, or the whole building; but he is probably in the same position with regard thereto as the tenant of a house. His exact position will depend upon the terms of his agreement. Broadly speaking, he has otherwise the same rights and liabilities with regard to the whole of the building generally as has the tenant of an apartment to the whole of the house in which the apartment is situated. He is absolutely entitled to use the common staircase—that one which is usual and necessary for the proper enjoyment of his flat. And this being so, the landlord must not allow it to get into disrepair; and should the tenant, or any person who is lawfully using it as an approach to one of the flats, suffer any hurt or injury through its defects, the landlord will be liable to him for damages. And the landlord has no right to close or remove it and substitute another staircase not so convenient for his tenant. But if the staircase is merely an extra one, the use of which is not necessary for the tenant's proper enjoyment of his flat and has been afforded the tenant by the mere goodwill of the landlord, the latter may close and take it away as he pleases, and is not liable for the consequences of any defect therein unless the same has arisen through his gross negligence.

Excepting the staircase and the lift, which would probably be always under the direct management of the landlord, the latter is not liable for any damage caused by any machinery, fittings, and apparatus which are common to the use of all the tenants in the building, and the defect in which has not been caused by the landlord's negligence. Tenants of flats have therefore to run the risk of inconvenience and damage caused by such casualties as the bursting of water-pipes, &c. And though the tenant of the top floor, or indeed of any other floor, is entitled to the support of the floors and structure beneath him, he must yet maintain that support at his own expense, and for this purpose he would have a right to enter upon the flats and other premises below in order to do so. This right of support is really in the nature of an easement, and an injunction should be sought where it is being withdrawn by positive acts. But in view of the characteristic conditions of flat-life and of its comparatively recent introduction to the law, it might be that a tenant could obtain a ruling from the Court that the landlords of flats are under a peculiar liability to answer for the support of the flats they let.

Duty or tax must be paid in respect of a house-porter of a block of flats as for an ordinary "male servant" (*Marchant* v. *L.C.C.*).

FOOD.—This subject is dealt with more particularly in the article on ADULTERATION and in such articles as those on BUTTER, TEA, &c. As to unsound food generally, reference should be made to the article on FISH DEALERS, and the penalising provision of the law therein set out read as though the following words were added to the word "fish." These are the words: "any animal, carcase, meat, poultry, game, flesh, fruit, vegetables, corn, bread, flour, or milk." The statute in which the provision is contained is the Public Health Act, 1875, and an amending Act of 1890,

gives a magistrate certain powers, under certain conditions, to also revoke the licence of the occupier of a building used as a slaughter-house. A *fruit broker* escaped conviction under the following circumstances. He sold some foreign walnuts to a dealer upon the condition that the latter should destroy the unsound portion before offering them to the public, and the dealer not only did not expose any of the nuts for sale, but handed them to a sanitary inspector, by whom they were subsequently destroyed under the order of a magistrate. Nothing else but fish and the articles above enumerated can be the subject of a prosecution under the Act; putrid butter or bad eggs, for example, do not come within its scope.

The most general subject for proceedings under the Act is unwholesome meat. It may be taken as a general rule that any animal killed immediately before, or during, or after parturition is unfit for human food. Reasonable diligence should be used in order to have the meat examined forthwith, or as soon as possible after the seizure. In one case a conviction was quashed which was based on an examination of meat in hot July weather one day after the seizure; but in another case a carcase seized at 8.45 P.M. was held to have been examined with sufficient speed when the examination took place at 10.45 on the following morning. A conviction may be obtained even in the absence of proof of any actual personal knowledge on the part of the person charged; but it is essential that the article should have been exposed for sale, or deposited for the purpose of sale, or of preparation for sale. There may be two offences committed: exposing and depositing. Should any person in London have in his possession any article which is unsound or unfit for human food, he can call upon the sanitary authority by notice in writing to remove it as trade refuse.

FOREIGN BILLS and EXCHANGE.—*Foreign exchange* is a term used in commerce and in political economy to denote the operation of paying or receiving money in one country, for its equivalent in the money of another country, by means of bills of exchange. The operation is not always a simple one, for it may involve a determination of the relative values of the currencies of a number of different countries, in order to discover whether a particular remittance to a certain country may be more economically effected by means of bills of exchange than by the transmission of actual cash, goods, or international securities. Thus a remittance from London to Paris may, under some circumstances, be most profitably effected by the purchase and remittance to Paris of a Berlin bill drawn upon Paris. The great centres of commerce have each a market, generally called an exchange or an equivalent name, wherein the rates or prices of exchange are fixed; and these rates are themselves very generally referred to as the exchange. Where, however, the rate is, in effect, a premium paid by the person effecting the exchange as merely the price of the convenience, it is called an *agio;* but this term is now rarely used except with reference to operations in countries where the metallic money is at a premium, whilst the regular medium of exchange there is paper money having an enforced currency. The term agio, or *agiotage*, was first used in Venetian finance, and subsequently throughout Europe, to express the additional sum payable in the exchange of a depreciated metallic or paper currency for a currency of full value.

The theory of exchange has a supreme importance in monetary matters;

it dominates all questions of this class, and touches the very foundation of the metallic circulation. Much has been written upon the theory of exchange, but most of it can only serve to confuse the ordinary man of business as to the nature of the theory itself and as to its practical application to the needs of his everyday activities. The theory of exchange is, in a word, a postulate that all financial transactions between any two countries resolve themselves into a balance, which may itself be liquidated by a transfer by the indebted country to the other of some credit equivalent to the balance, to which it may be entitled from some other country or countries. Failing the possibility of such an ultimate transfer of credit, the balance must be liquidated by a transfer of gold. The point of the theory is that, generally speaking, the only transfer of gold which must inevitably be necessary is that which may be required to liquidate the balance.

Since commercial exchange thus creates a relationship between peoples of different nationalities, and is not confined to individuals of the same nation, it follows that the choice of a monetary system is not entirely a domestic question. Let the monetary system of any country be based upon an enforced depreciated currency, and it will be found that this fact alone is one of material and prejudicial importance in all its exchange operations with other countries. The ideal conditions would exist where a sum of, say, English currency which will buy a pound of bullion of given purity in the London market can buy a bill for a sum of, say, French currency which will buy a pound of bullion of the same standard in the market at Paris. The exchange may then be said to be at par between those two countries.

It is necessary that money should be able to pass beyond the limits of its own country in order that it may pay for goods bought from the foreigner; and it is equally necessary that it should be able to return. Money must therefore be such than it can be both exported and imported. Money is not an immovable form of wealth. It is, in the words of a French writer, a vehicle always in movement, which in its uninterrupted travels moves not only within its own territorial limits, but passes and repasses the frontiers, paying visits abroad when goods are bought there, returning to the country of its origin in consequence of sales made to the foreigner, and having a circulation of its own which never ceases so long as is maintained the circulation of the commodities for which it serves as a means of transport. The movements of the foreign rates of exchange are the surest index of the direction maintained by this vehicle, announcing as they do its entries and departures as soon as they occur. By them we are enabled to prophesy the abundance or the scarcity of available capital upon the market, and anticipate the rates of discount. It is impossible, therefore, to have an exact view of the state of the monetary circulation of a country unless one has at the same time some regard to the state of its exchange upon foreign countries.

Functions of documents of exchange.—The documents of exchange are titles of credit upon a foreigner, bills of exchange, bank notes and cheques. Their principal function is to supplant cash in the payment of the reciprocal debts of two commercial places, and in the adjustment of the commercial balance between them. Cash is employed only exceptionally for this object; it is easy to conceive the reason. To a circle of exchange four persons are always necessary; A., say in England, has exported English goods to B., say

in France; and in order that B. may be saved the expense and risk of sending money to A., the latter draws a bill on B. for the sum due, and sells it to his neighbour D. in England, in order that he may send it instead of money to C. in France, from whom D. has imported French goods of exactly equivalent value, and who, on the expiry of the days the bill has to run, takes it to his neighbour B., and gets his payment, while in possession of the bill B. has his discharge from A. The debt on both sides is thus paid without the transmission of a single ounce of gold or silver. Suppose that a merchant in London has a payment of £1000 to make in Paris; if he wishes to pay in cash, he must pay the cost of its conveyance from London to Paris, and also the premium for its insurance. But the cost of conveyance and the premium of insurance will together materially increase the amount of his remittance, and he accordingly takes advantage of the less costly means of procedure placed at his disposal by the system of exchange. He purchases the bill on Paris equivalent to the sum he desires to remit. The bill will be payable in francs, and this he sends to his creditor in Paris, who will there collect its amount from the person by whom it is payable. The increase upon this remittance is here simply the cost of postage. But in actual fact the transaction is a little more complicated and more expensive. The banker or broker who has taken up the position of an intermediary must be reckoned with; for bankers and brokers having become the holders of substantially all the paper drawn upon abroad, and so, in effect, the debtors of all the paper drawn upon their own centre, have thereby centralised the debts and the credits of their respective countries, and consequently created a market for bills of exchange, and acquired a position whereby a price may be charged therefor to serve for their own profit. There are, however, other causes which determine the rate or price of exchange.

Causes which affect the rate of exchange.—The distinction between long and short bills has a great importance from the point of view of the discussion of the causes which act upon the market price of bills of exchange, or the course of exchange, though the variations in the rate of each of these classes of bills depend, it is true, upon the same *general cause*. This general cause is found in the relation of the supply to the demand, and this again is primarily influenced by the state of trade between two given countries. Though in view of the primary and general nature of this cause the distinction between short and long bills has, for the purpose of general discussion, only a secondary importance, yet upon the market, for current business, this division of bills has a capital importance, because the offers and demands of every day vary for each of the two categories of long and short bills, and are coincident with operations of a different nature.

Short bills.—The price of short bills depends mainly upon the balance of trade. The word is not taken, when properly understood, in the sense given to it at other times. In this balance enters not only the credits and debits resulting from the exportations and importations of merchandise, but the freight and commissions thereon, and even those credits and debits which arise out of such operations as for example, in London, the buying and selling for foreign account of Stock Exchange securities, the buying and selling abroad of like securities for the London account, the granting of loans from London to foreign governments and companies, and the payment to London

of such loans and their interest. The rate of exchange is therefore, from the point of view of the balance of trade, the condensed effect of a variety of facts and forces which are too numerous and too complex to admit of exact appraisement.

Nothing more can be done at any time than to choose some particular trade or financial movement of striking importance and attribute to that some determining influence, and to merely hazard the character and influence of other movements. And not even do all the bills offered upon the market and arising out of the foregoing suggested operations correspond to credits. There are bills which are drawn in blank by bankers whose object may be, for example, to draw heavily on London and run up a big debit-balance over here when the price is high, and when the price is low to buy enough to pay off their debt and leave a profitable balance on the other side of the account.

Amongst other influences which may be specially noted in this connection is the more or less facility with which remittances may be made from one country to another by means of certificates of stocks or other foreign securities, for there is a certain number of Government securities and of stocks and shares which have an international market. The place which is debtor can therefore use these certificates, or their coupons, for the payment of its debts. This is a transaction very like the exchange, and can play the same part; its use tends to moderate the course of exchange. There is also the periodical exportation and importation of gold, either in specie or by credit-notes, during the tourist season. This is really by no means an insignificant factor amongst the influences upon the rate of exchange. In the year of the Paris Exhibition of 1889 it was estimated that gold to the amount of nearly 300,000,000 francs was imported into France by visitors; and an English Foreign Office Report has placed it on record that at least £21,000,000 in foreign gold is, by like means, annually introduced into Italy. The stock of gold which a country may have in hand at a given time has a most important bearing upon the rate of exchange. If gold is scarce the rate of discount is high, and this attracts gold and causes a decline in the demand for bills on that country; their price, or the rate therefor, accordingly decreases. Let gold become plentiful the rate of discount declines, and it pays better to remit there by bills than by specie.

The extent of the variations of the price of short bills should be, apart from the foregoing, strictly limited. If commercial men send bills abroad wherewith to liquidate their liabilities, it is because it costs less to do so than to send cash. The *buyers* of bills of exchange go even so far as to pay to sellers a premium equal to the amount of the cost of transport. But they will not consent to go beyond that cost, and this point which they will not pass is called the *gold point*. It is the point of departure from cash. When bills are sufficiently scarce or the demand for them sufficiently strong for the course of exchange to pass this cost, the debtors prefer to send money in payment. The inverse situation may be produced. An abundance of bills can cause the price to fall below par. But the *sellers* will never submit to a greater loss than the cost of the transport of cash; they would prefer to cash their bills abroad and make gold come to them free. This also is a gold point: the point of entrance of gold. Thus when the rate of exchange abroad rises above par, there is a movement towards the exportation

of cash; when it descends below par, an importation of cash should follow. This rule is especially applicable to the place which gives the "uncertain price" to all the other places. When, on the contrary, a place gives the "certain price" to another, it is the fall of exchange below par that is characteristic of the departure of cash, and it is the rise of exchange which announces the importation of gold. This demands some illustration. It is said that a place gives the uncertain price to another place when the exchange upon the latter place is quoted in the money of the place giving the price. On the other hand a place would be said to give the certain price to another place when the exchange thereon is quoted in the money of the latter place. Thus, at Paris, all rates of exchange are quoted in francs: Paris thus gives the uncertain price to all places. In London, the exchange upon Russia and the United States is quoted in shillings and pence; London gives the uncertain price to St. Petersburg and New York; but London gives, on the contrary, the certain price to Paris, because the exchange upon Paris is quoted in London in francs. When exchange upon London rises in Paris, the Frenchman pays dearer for the pound sterling according to the extent of the demand, and according as the amount of debts payable in London exceed the amount of credits receivable there. Suppose that London is the debtor of Paris, then the exchange upon Paris will rise in London even if francs are quoted in pence; but it is the sovereign that is quoted in London in francs. The rise of paper upon Paris payable in francs—the rise of the franc—involves a fall of the pound sterling. In the same way, when London is creditor of Paris, as paper upon Paris is offered and falls in price, the fall of the franc involves a rise of the pound sterling. Thus, in England, the exchange upon Paris is unfavourable when it falls below par, favourable when it rises above par. The *greater* the quantity of foreign money which is given for the pound sterling, the *lower* the rate of exchange becomes; for, to use a familiar illustration, as the price of oranges would be said to fall if it varied from twelve for a shilling to sixteen, so if the rate of exchange on France varied from fr. 25·20 to fr. 25·40 per £ sterling, it would in fact, though commonly said to rise, mean that the francs are less valuable at the higher figure than at the lower.

When it is said, as above, that the exchange is "unfavourable," or that it is "favourable," or that it is "against" or "for" us, there is undoubtedly a certain practical justification for the terms so used. Importations and exportations of cash are not indifferent facts. Cash is not, as was formerly believed, the only form of riches in the world; it is a merchandise which serves as an intermediary and as a basis for the operations of credit. It is necessary, therefore, that it should be readily available in sufficient quantity and at an advantageous price. An importation of money is therefore ordinarily a favourable fact and its exportation an unfavourable fact. In England, so far as exchanges in foreign money are concerned, *high rates are for us and low rates against us.* Cheap money means a low bank-rate; a low bank-rate goes hand in hand with a strong reserve, and the strength of the reserve is dependent to a great extent on the course of the exchanges. If New York, for instance, is drawing gold from us, thus weakening the reserve and forcing the bank to put up its rate in self-defence, a rise of the New York exchange will put a stop to the export; and, what is more, if the rise

continues up to a certain point, the gold will begin to flow back again. As a consequence the reserve will recover strength, bank-rate will fall, and traders will again be able to discount their customers' acceptances at a moderate charge. This, and nothing more, writes the author of the *A B C of the Foreign Exchanges*, is the reason for regarding a high exchange as favourable and a low exchange as unfavourable.

Long bills.—Buyers of long bills are not moved by the same considera tions as buyers of short bills. They buy on the exchange in order to temporarily invest their idle capital. It is therefore for the rate of interest that they have a special regard. Nor do they overlook the question of credit, for where in the case of a short bill the risk of its dishonour is practically nil, in the case of a bill at three months many possible contingencies may arise—a bank may fail, or a commercial crisis occur. The price for a long bill may therefore be said to be made up of the short-bill price, or sight rate, interest for the time during which it will run, the bill stamp, and the credit contingencies. The rise of the market rate of discount in one country higher than the rate in other countries of the same character provokes a more active demand for long bills in that place, and tends to raise the price. Should discount in London be higher than at any financial centre on the continent, all the continental bankers will proceed to buy London bills. The rise of the rate of discount has another consequence, the corollary of the first—it provokes an importation of money in view of the discount of long bills. Whenever, therefore, the price of short bills reaches the point of the departure of gold, the rate of discount rises and money is imported. The Bank of England never fails to guard this movement. Should it maintain discount at too low a rate, its bill-case will fill up, its cash reserve will be attacked, and in order to preserve the latter it must raise the rate of discount. The Bank of France is not in the same position. A part of its cash reserve defends itself. Nobody wants it. It is a silver reserve, depreciated like the metal of which it consists. The bank offers silver—as it has a right to do, for the five-franc piece is legal tender—to those who require discount. But the five-franc piece is no good for exportation. In France every one is bound to take it for five francs; but abroad it will only be taken for its value of 25 grammes of silver at 9s. 10d., a value which varies according to the market-price for the time being, but which is invariably below five francs. Whatever has to be paid abroad must be paid in gold. The Bank of France only gives it by charging a premium. Thus it defends its gold reserve without raising the rate of discount, but it does so to the detriment of the gold reserve of the country generally. The only other way in which the international money of a country may be defended is that adopted by the Bank of England, which raises the rate of discount, renders exportation useless, and attracts capital from abroad. By this procedure the liquidation of the balance of international liabilities is possible without the exportation of money, or with such an exportation as carries with it the probability of a speedy return. And *see* ARBITRAGE; BANK-RATE; COURSE OF EXCHANGE; PARS OF EXCHANGE.

FOREIGN COMMERCIAL TRAVELLING and SAMPLES FOR ABROAD.—It will be useful to summarise here the rules regarding, or concessions in favour of, commercial travellers in India and the British possessions and

foreign countries. It will be seen that in different countries there are different regulations as to licences and samples. In **British India** there are no regulations specially affecting commercial travellers and their calling, and they are not required to take out licences; travellers resident in Calcutta are not called on to pay the regular municipal licence tax. In *Native States* also there are no special rules or regulations on the subject, but in *Kashmir* all Europeans other than civil and military officers of the British Government, whether they are commercial travellers or not, are required to provide themselves with a pass from the Resident before entering the Maharajah's territories; and in *Nepal* the general prohibition against Europeans visiting Nepal without the permission of the Durbar applies to representatives of European firms. With regard to the treatment of commercial travellers' samples and patterns, no special regulations exist in British India; but it may be said generally that import duty is charged on import and refunded on export to the extent of seven-eighths, and that samples of no marketable value are exempted from all payment. Wherever octroi is levied, whether in British or Native India, on merchandise brought into towns, the duty applies to samples of merchandise as to goods generally if the samples are of taxable value. As regards the treatment accorded to samples of merchandise in native states, no duty is levied in *Gwalior* when samples are imported and exported again unsold; and it appears that, generally speaking, the same rule prevails in all the states of *Central India*. In cases where the concession is not provided for by existing regulations, it could probably be secured without difficulty by application to the political officer concerned. There are apparently no rules for the treatment of commercial travellers' samples in the other native states of India.

The Colonies.—In the *Bahamas* there are no laws or regulations affecting commercial travellers. No Customs regulations exist as to the introduction of travellers' patterns or samples; it is customary to admit such articles free of duty, provided that they are of no great value. In *Barbados* no licence duty is imposed on commercial travellers merely seeking for orders. Resident agents are liable to payment of a trade tax on all goods sold for delivery in the colony. A *bonâ fide* commercial traveller receives drawback of the duty paid by him on any sample or specimen of goods imported into Barbados and subsequently taken away again, provided that it is shown to the satisfaction of the proper officer that such sample or specimen has been reshipped and is identical with that imported. In the *Bermuda Islands*, patterns and samples, when of no intrinsic value, have hitherto been admitted there without payment of Customs duty, although these articles are not expressly exempted by the tariff. It is to be noted that commercial travellers are specially exempted from the operation of the Bermudan "Pedlars Act" of 1894, which requires pedlars to take out licences for the prosecution of their business. Commercial travellers who merely seek orders in the colony of *British Guiana* are not subject to any tax, or required to take out a licence. And resident agents of British firms are not liable to any taxes as such. On the Demerara railway commercial travellers are allowed double the quantity of free luggage allowed to ordinary passengers, and they are charged only half the usual rates for excess luggage carried at passenger's risk. *British Honduras.*—Every commercial traveller is required to take out a licence, costing ten dollars (£2, 1s. 8d.), and on his arrival in the colony is notified of this regulation by a Customs officer. Patterns or samples of commercial value brought by a commercial traveller are subject to duty, which may be either deposited or guaranteed. They are examined previous to shipment from the colony. There are no

restrictions of any kind imposed on British commercial travellers in *British New Guinea.*

Canada.—Section 83 of the Canadian Customs Act, c. 32 (Revised Statutes), provides that, during regular warehouse hours, and subject to such regulations as the collector or other proper officer of Customs at any warehousing port sees fit to adopt, the owner of any warehoused goods may take therefrom moderate samples without *present* payment of duty on entry; but it should be noted that under section 84 of the said Act duties are payable in all cases on the quantity and value of the warehoused goods, as ascertained and stated *on the first entry or as originally warehoused.* An invoice or statement in detail, attested by the traveller, showing the price (wholesale) of each sample as sold for home consumption, must be delivered on entry. With regard to the entry of dutiable commercial samples from the United Kingdom or other British country, accompanying a commercial traveller, through an intermediate country into Canada, it has been provided that the same may be entered at the Custom-house under the British Preferential Tariff, upon proof by certificate or affidavit, to the satisfaction of the collector at the port of entry, that the samples are *bonâ fide* the produce of the manufacture of the United Kingdom or other British country admitted to the benefits of the British Preferential Tariff. As regards commercial travellers' licences in Canada, the following particulars may be useful as to the several provinces of the Dominion: *British Columbia.*—Here a licence is requisite; but it does not empower the holder to carry a stock of goods. It costs:—for travellers in liquors, cigars, or both, $100 (£20, 11s. 1⅓d.), for every six months; for other travellers, $50 (£10, 5s. 6⅔d.). In *Manitoba* commercial travellers of any nationality selling goods are not required to pay any tax. Membership of the Canadian Travellers Association (subscription $10) carries with it a right to reduced railway expenses. The same applies to *New Brunswick.* In the *North-West Territories* there is an annual tax on commercial travellers doing business in intoxicants of $210 (£43, 3s. 4d.). Otherwise there are no regulations affecting commercial travellers in these territories. In the Province of *Nova Scotia* there are no regulations in force with reference to commercial travellers except with regard to those who represent incorporated companies. A company pays a registration fee graduated according to its nominal capital, the fee of a non-Nova-Scotian or non-Canadian company being double. There is also, in some incorporated towns, a licence fee upon commercial travellers representing foreign firms soliciting orders for custom-made clothing. In the Province of *Ontario* no licences have to be obtained. In *Prince Edward Island* commercial travellers are subject to special regulations and taxes. So, too, in *Quebec.*

Cape Colony.—The agent of a firm not belonging to Cape Colony (defined as "any person other than an importer, who sells or offers for sale by sample or otherwise goods of a firm whose place of business is not in this colony; but not including a person who sells or offers for sale goods consigned to him by a foreign firm") must provide himself with a licence at the cost of £25, which licence, irrespective of the period of the year at which it may be taken out, expires on

the 31st of the following December. If, however, the licence is issued on or after the 1st July, the charge therefor is reduced by one-half. The licences are not transferable, even from one agent of a foreign firm to his duly authorised successor; and no refund of duty is made in the case of an agent who does not make use of his licence for the full period for which it is issued. An agent holding a single licence may sell the goods of any number of firms. Commercial travellers are allowed to travel first class with ordinary second-class tickets, and also half ordinary excess luggage rates for samples not for sale. Moderate samples are generally permitted to be taken by the importer or his agent of any warehoused goods, without entry and without payment of duty, except as the same shall eventually become payable as on a deficiency of the original quantity. No Customs regulations exist in *Ceylon* with reference to the admission of commercial travellers' samples and patterns. Samples of no commercial value are admitted without payment of duty, and those of value are allowed to pass free on condition that some approved firm guarantees their re-exportation. In *Cyprus* no laws or regulations exist requiring commercial travellers to take out licences, but "trade rates" may be levied in the principal towns. At present no rates have been specially fixed for commercial travellers, but they might be classified for purposes of taxation as follows:—"merchants," 3s. to £1 per annum; "travelling merchants," 1s. 4½d. per annum; "commission agents," 5s. to 15s. per annum. There is legally no exemption from Customs duty of commercial travellers' samples; but the practice is to register on importation all samples of marketable value, and to assess the import duty thereon at the ordinary rates. The importer deposits at the Custom-house at the port of entry the amount of the duty chargeable, and his deposit is subsequently returned to him, either in full or in part, according to whether the whole or only a portion of the samples are re-exported. In the case of patterns or samples having no commercial value, no import duty is charged, and no deposit is necessary.

In the *Falkland Islands*, *Fiji*, *Gambia*, and *Gibraltar* there are no special restrictions or conditions imposed upon commercial travellers, nor are there any special Customs regulations which call for notice. On the *Gold Coast* commercial travellers are not required to take out licences; nor, generally speaking, are any fees recoverable from them. If, however, they elect to land their goods after office hours or on holidays, they are charged the usual fees paid by all importers in like cases. The practice of the Customs is to allow travellers' samples, if of no intrinsic value, to be passed without any entries being made; or, if the samples appear to be saleable and of ascertainable value, to require a deposit on importation equal to the amount of the duty recoverable thereon. This deposit is refunded to the owner on certificate of the exportation of the same goods. Much the same practice of the Customs as the foregoing obtains in *Grenada*, where there are no formal regulations affecting commercial travellers doing business in the colony; nor are there any regulations in force in *Hong Kong* affecting British commercial travellers or agents of British firms.

Jamaica.—No special regulations or taxes exist in Jamaica affecting commercial travellers, and no licences are required by them. As regards taxes

payable by resident agents of British firms, it is to be noted that a licence is imposed on the following trades and businesses at the following annual rates:—Merchant—General Factor or Wholesale Dealer, £12, 10s.; Storekeeper—Commission Agent, Auctioneer, £7, 10s.; Retailer—where business premises under annual value of £10, £1; above £10 and under £20, £2, 10s.; and £20 and upwards, £5. With regard to samples, *see* Appendix. At *Labuan*, *Lagos*, and the *Leeward Islands* there are no special regulations. In *Malta* there are no fees or licence duties levied, and there are no special railway privileges. Samples of no commercial value are exempted from payment of import duty. In *Mauritius* a licence, costing 100 rupees, and valid for six months, is required by a "commission merchant—an agent who buys or sells or orders from abroad goods on account of others—whether the goods are imported in his own name or not." Commercial travellers, therefore, are subject to this licence duty if they are paid by commission. Goods may be warehoused, and the Customs will permit moderate samples to be taken therefrom. In *Natal* a commercial traveller, being "the agent or representative who, in Natal, solicits orders for the purchase of the goods or things of any person, firm, or company which does not itself carry on a licensed business, and also having a place of business in Natal," is required to take out a licence at the cost of £10. Every such licence expires on the 31st December of the year in which it is taken out, but a stamp of £6 is sufficient for licences issued on or after the 1st July in any year. If a commercial traveller disposes of his samples in the colony, he renders himself liable to the charge of £5, which is imposed upon any "hawker or itinerant trader of imported goods, and for each person, agent, or servant so employed." Samples and patterns are usually admitted free of duty into the colony on receipt of a deposit, returnable on the departure of the traveller with the samples and patterns. But patterns or samples of no intrinsic value, such as strips of cloth or old boots and shoes, are regarded as free of import duty, though all patterns or samples sold in the colony are charged with duty. And *see*, further, in Appendix.

There are no special regulations in *Newfoundland* or *New South Wales*, but in the latter colony all goods imported in excess of the ordinary requirements for sample purposes, and having a saleable value, are treated as merchandise and subjected to duty at the tariff rates. In *New Zealand* there are special regulations, as stated in the Appendix. In *Queensland* there are no special regulations; but commercial travellers enjoy certain railway privileges. As regards the customs in this colony, it should be noted that duty is collected on all dutiable goods said to be samples, though a drawback is allowed on re-exportation intact. The minimum amount of drawback that can be paid is £2; and if any portion of the goods has been sold in the colony, drawback is refused on the whole parcel. On certain goods drawback is not allowed, viz. ships' stores, grain, tobacco, spirits, wine, beer, and jewellery. Cut patterns of no commercial value are admitted free of duty. At *St. Helena* no licence is required, but there is a wharfage rate of 1s. on cases measuring three cubic feet, which cases may contain goods to the value of £500. A licence, however, is neces-

sary for the sale of liquor; but if the liquor is the property of any person on board any vessel at anchor in the harbour and has been imported in such vessel, or if it is consigned for sale to any licensed dealer by any person, it may be sold by auction after twenty-four hours' previous notice to the police. No licence is required at *St. Lucia,* and samples are there admitted free of duty. Nor is any licence required at *St. Vincent,* though Customs duties are charged on all samples of marketable value imported by the traveller, the duty being refunded on his departure, less the amount on any samples he may have sold during his stay. In the *Seychelles Islands* a commercial traveller, or agent of a British firm, is required to take out a licence, the cost of which varies according to the nature of the trade in which he is engaged, and is specified in the Appendix. The licences remain in force for six months from date, but they may be issued for shorter periods at proportional rates of duty. There are no special laws or regulations in force in *Sierra Leone* affecting commercial travellers. Certain licences, however, are required by persons dealing in spirits, wine, and beer, and municipal licences have to be taken out by persons carrying on any trade or business in the city of Freetown. Similarly, in the Protectorate special licences are required for the keeping of stores and the sale of spirits; but traders do not require these who do not reside more than four months in any year in any one place in the Protectorate. In *South Australia* no licences are required; but duty is payable on imported samples, and drawback allowed on their re-exportation. Samples may, however, be delivered on deposit of double the amount of the tariff duty, the deposit being refunded in full when the goods are reshipped. Cut samples of dutiable articles are admitted free.

In the *Straits Settlements* there are no regulations affecting British commercial travellers, or the introduction of their samples and patterns. In *Tasmania* there is an importer's licence of £10 imposed on resident agents of firms not domiciled in the colony. A licence costing £25 is requisite for every wholesale vendor of wines and spirits. In general, no licence fee is payable by commercial travellers. At *Trinidad* travellers are allowed to clear as baggage such samples as are necessary for transacting their business, duty being paid on all goods that are liable to duty. But dutiable goods brought as samples may be delivered on deposit of a sum sufficient to cover the duty, provided that the duty involved does not amount to more than £5. The deposit in such cases is returnable on the reshipment of the goods. In *Victoria* no restrictions are imposed on commercial travellers, and they may take orders for all classes of goods (including spirits, &c.) without any licence being required. Their samples are either admitted on deposit of the duty payable thereon, in which case the deposit is refunded on re-exportation, or the duty is charged and the samples stamped or marked in such a way as to be easily identified, so that they can subsequently pass in and out of the colony without hindrance. No duty is charged on samples such as cut patterns, &c., which are of no commercial value. No licence charges of any kind are imposed on commercial travellers in *Western Australia.* The total duty payable upon samples and

patterns is decided by examination when they are entered inwards; and at the same time a list of the goods is made out for purposes of comparison on re-exportation of the samples. The traveller deposits the amount due, which is refunded to him *pro rata* on any balance of the shipment re-exported within two months from the date of entry; if no refund is claimed within the period named, the total amount deposited is lost. No refund of duty is allowed on samples chargeable on importation with an *ad valorem* duty if the total value of such samples is less than £50; and under no circumstances will the duty be refunded, except when the samples are exported in the original packages and when the consignment exported exceeds £50 in value. In the case of jewellery and watches, either the duty must be paid in the first instance, or the goods must be bonded.

Foreign countries.—In the *Argentine Republic* a licence is required by representatives there of foreign firms, with or without a business house, the cost of the licence varying from 100 to 500 dollars (£7 to £35), according to the number of firms represented and the importance of the business transacted. Commercial travellers proper pay a fixed licence of 50 dollars (£3, 10s. 0d.), which covers all their operations in Buenos Ayres and the national territories, as distinct from the other provinces of the interior. For business in the latter there are local imposts, as specified in the Appendix. The traveller, upon production of his licence, is allowed to take into the country one or more cases of samples duty free. *Austria-Hungary.*—In order that British commercial travellers may lawfully exercise their calling in Austria it is necessary that they should provide themselves with certificates of identity issued by British Chambers of Commerce or Mayors of towns—*see* Appendix. Travellers may not solicit orders from private individuals, but must confine their solicitations to such firms or individuals as in the course of their business actually make use of the goods offered them, except in regard to the following goods:—Machine plant of all kinds, including motors and their component parts; building material, including artificial stonework of all kinds, cork sheets, pasteboard for roofing, and artificial paving material; motor cars; engineer requisites for heating and lighting apparatus and for waterworks; dies; wooden blind rollers and Venetian blinds; fine or embroidered linen; sewing-machines, typewriters, and cycles. But the foregoing prohibition does not extend to cases where the solicitation is in response to a previous and spontaneous written order for specific goods from the person giving the order. In the case of groceries and druggists' goods, however, the prohibition is absolute. For *Hungary, see* Appendix.

Belgium.—No restrictions are imposed on British commercial travellers, nor is any licence duty charged. In *Brazil* the regulations affecting commercial travellers vary very considerably in the different states of the Republic. Particulars are set out in the Appendix. In Rio de Janeiro and São Paulo no licence was required for commercial travellers, but as the press is persistently advocating its establishment, it would be wise to make previous inquiry on the subject. Resident agents of commercial firms are subject to taxes, which vary in the different towns and according to the class of trade. Commercial travellers entering Brazil have to pay import duties on samples they bring with them; in cases, however,

where such duties do not exceed one milreis per package, no charge is made. Duties are supposed to be refunded on exportation of samples. Samples of goods subject to consumption tax must be stamped in accordance with the provisions of the consumption tax law in the same way as goods actually for sale. It would appear that nowhere in Brazil is any certificate required from the British authorities, but travellers are recommended to carry passports with the *visa* of Brazilian consular officers. In *Chile* commercial travellers have for a long time past been allowed to carry on their business without being called upon to take out any licence or document whatever, or pay anything in the nature of a tax. But the municipalities have power to levy such a tax, varying in amount from 100 to 300 dollars, and the necessity for taking out licences on the part of the agents of British firms would depend upon the circumstance of their occupying a distinct place of business to which their names were attached. In *Colombia* no licence is required; but with regard to samples and the Customs a concession has been made whereby all travelling agents who bring samples may import and re-export them, within four months, without payment of duty. The best plan, however, is for the samples to be imported under the Tariff Act, by which 25 kil. of samples mutilated so as to have no value are allowed free of duty. Should the amount be insufficient, further packages of not more than 25 kil. each can be sent to them from time to time. By this means there is no restriction to four months.

France. — By the law of France, "the commercial travellers of foreign nations shall be treated as regards licences on the same footing as French commercial travellers are treated by these same nations." As foreign commercial travellers do not require licences in England, British commercial travellers enjoy the same exemption in France and in the French possessions. In the case of agents of British firms resident and trading in France, they are subject to the same taxation with regard to licences as Frenchmen. The Licensing Law is applicable to every individual, French or foreigner, who exercises a trade, industry, or profession, with certain exceptions. The duty is divided into two parts, one fixed and the other proportional. For the payment of the fixed duty all professions, &c., are divided into eight classes, paying a duty varying from 2 fr. in a small commune to 400 fr. in Paris. The proportional duty is calculated on the rental of the dwelling-houses, shops, warehouses, &c., of the taxpayer, and varies from one-tenth to one-sixtieth of the rental. The two duties are in certain cases both payable, and in others only one or other of them, but the regulations and their exceptions are of a very complicated character. In addition to the foregoing regulations specially concerning traders, all foreigners resident in France are required to register themselves at the Prefecture of Police in Paris, or at a Mairie in the departments, and receive in return a certificate, for which a fee of 2 fr. 50 c. is charged. It is provided, under heavy penalties for infraction, that "every foreigner, not legally domiciled in France or Algeria, must, on arriving in a locality to exercise a trade, profession or industry, within one week make at the Mairie a declaration of his residence, with proofs of his identity. No one in France or Algeria may employ a foreigner not so provided with a certificate.

Germany.—British commercial travellers require in Germany, in order to pursue their business, a trade legitimation card (licence or permit), in a certain prescribed form, and as issued by the authorities of the Confederated States. The following, extracted from the "Rules for the practical administration and application of the Industrial Code for the German Empire," specially affect Commercial Travellers:—By virtue of their permit, manufacturers of, and whole-

sale dealers in, gold and silver goods, may either themselves, or by travellers in their employ, also beyond the limits of the district in which they have their trading settlement, offer gold and silver goods for sale to persons who deal in such, and may convey the goods with them, provided that the goods thus offered for sale are disposed of, in accordance with the usual trade practice, by the piece to retailers. The same rule applies with regard to watches, jewellery, tortoise-shell goods, precious stones, pearls, cameos, corals, wines, linen, shirting, and sewing-machines. Foreigners who desire to become itinerant vendors of goods must be provided with an itinerant vendor's certificate. Commercial travellers who are foreigners, and whose identity is apparent from their trader's licence, as provided by treaty between the respective countries, are amenable to the provisions of such treaties. Where such travellers offer goods for sale, or purchase goods of persons other than merchants or the actual producers of such goods, or in places other than public markets, they become subject to the rules applicable to itinerant vendors. And so also when the travellers in question wish, without any previously expressed invitation having been addressed to them, to solicit orders for goods from persons other than merchants in their business houses, or persons who deal in goods of the kind offered, an exception being the soliciting of orders for printed matter, other writings, and pictures. Commercial travellers, being subjects of countries with which no arrangement has been come to on the subject of traders' licences, but to which has, nevertheless, been accorded the most favoured clause in regard to trading generally, require, for the effecting of their transactions, a trader's personal licence. Great Britain belongs to those States which, although they have no agreement with Germany relative to trading licences, yet are accorded the right of most-favoured-nation treatment as regards mercantile pursuits. This trading licence entitles the holder, after due payment of the ordinary taxes of the country, to prosecute his calling and conduct his business within the limits of the empire to the same extent as may those commercial travellers already more specifically referred to as belonging to countries in treaty with the empire. The trader's licence, however, may be granted, refused, or cancelled in accordance with the rules set out in the Industrial Code, but the want of a fixed settlement within the empire is not a reason for the refusal of a licence. The licence costs 1 mark (1s.), and issued in Berlin by the Office of the Chief of Police, in other parts of Prussia by the "Regierungs-Präsidenten," and in all other parts of the empire by the police or municipal authorities. Samples of goods which cannot be used for other purposes may be imported duty free into Germany.

Greece.—Commercial travellers are not required to go through any formalities in order to be able to exercise their calling in Greece, nor are they required to take out any licence, provided they come and go merely as bearers of samples and receivers of orders. Agents of British firms who are established in the country are required, as soon as they become agents, to fill in a form stating in what business they are engaged, with a view to their paying a certain tax and obtaining a licence. In *Italy* certificates are properly required in respect of commercial travellers, but as the Government enforces their production only in the case of travellers belonging to countries which have adopted restrictive measures against Italian commercial travellers, a Briton may safely proceed to his business without one. *Netherlands.*—The only direct tax to which foreign commercial travellers there are liable is that on their professional income, 15 florins (£1, 5s.), provided they are not domiciled in the country. As a proof of their compliance with this formality they are furnished with a certificate, free of charge, signed by the burgomaster or his deputy, to which they are obliged to affix their signature. This certificate, which must be produced on demand, will only be granted upon

proof of payment of the tax or of receipt of security for the amount. In *Peru* the agents of foreign firms pay licences, but not under that specific name. They pay as merchants or traders, and the cost of the licence is calculated upon the supposed net profits of the business, the proportion levied being about 5 per cent. of such profits. In *Portugal* British commercial travellers and agents of British firms are not required to obtain any licences or other documents to enable them to pursue their calling. But any foreigner residing in Portugal over a period of seven days must obtain from his consulate a residential licence, for which British subjects are charged the sum of 2s. 6d. at our consulate. This document must then be indorsed by the police authorities, who charge a fee of 2100 reis, or about 7s. 4d. For the regulations in RUSSIA, *see* Appendix.

Spain.—British commercial travellers and merchants who travel in Spain provided with an identification card (for Form, *see* Appendix) issued by the authorities of their country, may, without being liable to any tax, proceed with their business, except that they must not actually sell and deliver any goods—they can only take orders from samples or patterns, or without. *Sweden and Norway.*—In the former country the traveller must pay in advance a tax of 100 kroner for each month of thirty days, and an additional 50 kroner for every succeeding fifteen days. On the receipt for this tax will be found information as to the regulations in force, and this receipt must be shown to the police before the traveller can legally commence business. In *Switzerland,* British commercial travellers are placed on precisely the same footing as native travellers—if provided with a certificate from a competent British authority—no consular *visa* being required; and if on arrival in the country a licence is taken out which is issued gratis to travellers having business relations exclusively with Swiss houses which resell the goods or use them for their own industrial purposes. In all other cases licences to British travellers, as well as in the case of natives, are taxed 150 fr. (£6) for twelve months, or 100 fr. (£4) for six months. Whether the bearer travel with or without patterns is in every case immaterial. Residents in Switzerland are quite free to act as agents of British firms, and no tax is imposed. The above-mentioned certificate from a competent British authority will be sufficient if issued to the traveller by the Chamber of Commerce in whose district the firm interested is established; it should be made out and signed in both English and French, and follow the form (similar to that for Russia, *see* Appendix) prescribed by the Swiss Law of the 24th June 1892. The traveller must produce his certificate to, and obtain his licence from, the authorities of the first Canton he visits. In *Turkey* no licences or other documents, other than passports, are required by British commercial travellers, or by agents of British firms, to enable them to solicit orders or trade in the Ottoman Empire.

United States.—It may be said generally that no licences are needed by British or any other commercial travellers in the United States. Nor are such travellers—"drummers," as they are usually called in America—subject to any special restrictions or made the subject of any special tax. A number of the States have, however, on their statute books laws regulating this class of business and requiring licences. But these laws, where they exist, are not enforced, for the Supreme Court of the United States has declared, in numerous cases, that no State can impose a licence tax for the privilege of selling goods which at the time of sale are not within its borders, *i.e.* a merchant or manufacturer of Maryland can go into Virginia or any other State, or send his agent there, and sell his goods without paying licence tax to such State, provided the goods are not within the border of the State in which they are sold.

But if the goods are sent into such State to be sold there, they are liable to the tax laws of that State. The Court, in making these decisions, declared that for one State to impose a licence tax upon the sale therein of goods which were in another State would be to regulate inter-State commerce, as plainly as it would be to regulate foreign commerce for a State to exact a licence tax upon the sale of goods which were in a foreign country. In the light of these opinions or decisions of the Supreme Court it is plain that no licence tax can be required of the traveller or agent of a British house to sell its goods in any one of the United States, if such sale is made before the goods are brought into that State. But where agents establish themselves with an office and samples in a State, representing British firms, they are required to pay taxes and fees similar to those required from American firms. Hawkers and pedlars may be required to take out licences, but no such provisions are made where goods are sold by sample.

In *Uruguay* a licence is required, which costs 100 dollars (£21, 8s. 6d.); the licensing laws of this country are so far-reaching that practically no occupation escapes its contribution towards the national exchequer. In *Venezuela*, on the other hand, commercial travellers of all nationalities are at liberty to follow their calling without licence or charge, but are liable to pay duties on samples when marketable.

Before proceeding on a foreign journey an intending commercial traveller should make inquiry at the COMMERCIAL INTELLIGENCE OFFICE (*q.v.*) as to the regulations for the time being in force in the country he proposes to visit. This is necessary, as the regulations are liable to change from time to time, and because the limits of this article have prevented anything more than a mere outline. And see the supplement article on this subject in the Appendix.

FOREIGN JUDGMENTS.—The judgments of the **Scotch** and **Irish** courts for debt, damages, and costs, may be enforced in England without any action being required to be brought thereon in the English courts. But such a judgment must, before it can be so enforced, be registered in England under the provisions of the Judgments Extension Act, 1868; when so registered, the judgment is virtually one of the English court in which it is registered, and as such can be proceeded upon by way of execution, judgment, summons, &c. Judgments of **foreign countries** generally—and in this term are included for this purpose the British Colonies and dependencies and the Empire of India—are in effect regarded by the English courts as a form of contract, and as such can only be enforced in England after they have been sued upon in the appropriate English court and a judgment thereof duly obtained. But they are contracts of a superior nature, and the parties thereto are subject to the doctrine of estoppel. The result is that a person who is entitled to the benefit of a foreign judgment, when he has sued in an English court the person liable thereon, will find that he is in a particularly favourable position, the person liable being held—as a general rule—to be estopped from denying the validity of the judgment, and therefore in effect prevented from defending the English action. The plaintiff should accordingly be in possession of his English judgment with but very little trouble and delay. He may specially indorse his writ, and obtain summary judgment under Order XIV. He has also the option of proceeding upon the merits of the subject-matter of the foreign judgment without basing his claim upon the latter as such.

But the foregoing principle being a very general one, there are some

important modifications which may conceivably work in favour of a defendant. These modifications appear in a number of more special rules, of which we will enumerate a few. The English courts will not re-try the case merely because the foreign court may have given a wrong judgment upon the particular facts or law; unless it has made a mistake therein with regard to English law, or has been deceived or misled, or arrived at its judgment with a clear knowledge that it was doing wrong. And if the defendant can show that the judgment was in any way obtained by fraud he will be entitled to defend the English action. And so he will if it appears that the foreign court acted without jurisdiction; or, probably, that the subject-matter of the judgment was immoral or illegal; or if the judgment is an attempt at the enforcement of the penal or revenue laws of the foreign state; or if the subject-matter of the judgment is a tort, and the law relating thereto is not substantially common to both countries. If the foreign judgment is in favour of the defendant, that judgment will be an absolute defence to any further civil proceedings in respect of the same subject-matter which the plaintiff may bring in the English courts, whatever shape those proceedings may take. A foreign *bankruptcy* adjudication has no effect whatever in England upon the debtor's real property here; but one of a Scotch or Irish court would operate upon both his real and personal property throughout the British empire. If the foreign bankruptcy assumed to affect his personal property here, the English courts would, as a general rule, recognise it. But a foreign bankruptcy adjudication does not prevent a bankruptcy adjudication in England, even though founded upon an act of bankruptcy committed in the foreign country, and even though that foreign country is the place of domicile of the debtor. *See* CONFLICT OF LAWS.

FOREIGN MARRIAGES.—All marriages between parties of whom one at least is a British subject, which are solemnised in any foreign place before a marriage officer, according to the provisions of the Foreign Marriage Act, 1892, will be as valid in law as if they had been solemnised in the United Kingdom with a due observance of all forms required by law; and a British certificate of a foreign marriage can now be obtained if the provisions of the Marriage with Foreigners Act, 1906, are first complied with. The same consent is required to a marriage under the Act of 1892 as is required by law to a marriage solemnised in England. Certain notices—practically the same as those required to be given to a registrar in England—of an intended marriage must also be given; and every person whose consent to a marriage is required may forbid its solemnisation by writing the word "forbidden" opposite to the entry of the intended marriage in the book of notices, and by subscribing thereto his name and residence, and the character by reason of which he is authorised to forbid the marriage. And any person may enter a caveat against an intended marriage. Before a marriage can be solemnised under the Act of 1892, each of the parties intending marriage must appear before the marriage officer, and make, and subscribe in a book kept by the officer for that purpose, an oath (*a*) that he or she believes that there is no impediment to the marriage by reason of kindred or alliance, or otherwise; and (*b*) that both of the parties have for three weeks immediately preceding had their usual residence within the district of the marriage officer; and (*c*) where either of the parties, not being a widower or widow, is under the age of twenty-one years, that the consent of the persons whose consent to the marriage is required by law has been obtained thereto, or, as the

case may be, that there is no person having authority to give such consent. The marriage officer is appointed by a secretary of state, and is usually an ambassador, governor, high commissioner, or consul. An intended marriage will be solemnised after fourteen days from the notice, provided it has not been forbidden and no lawful impediment shown. It will be according to the rites of the Church of England, or such other form and ceremony as the parties see fit to adopt; or it may, where the parties so desire, be solemnised by the marriage officer himself.

After a marriage has been solemnised under the Act, it is not necessary, in support of the marriage, to give any proof of the residence of the parties previous to the marriage, or of any requisite consent, or of the authority of the marriage officer. It is important to notice that if a marriage is solemnised under the Act by means of any wilfully false notice signed, or oath made by either party to the marriage, as to any matter for which a notice or oath is required, the Attorney-General may sue for the *forfeiture* of all estate and interest in any property in England accruing to the offending party by the marriage. To (*a*) knowingly and wilfully make a false oath or sign a false notice for the purpose of procuring a marriage; or (*b*) forbid a marriage by falsely representing himself to be a person whose consent to the marriage is required by law, knowing such representation to be false, is to incur the penalties of perjury. A marriage officer cannot be compelled to solemnise a marriage, or to allow a marriage to be solemnised in his presence, if in his opinion the solemnisation thereof would be inconsistent with international law or the comity of nations. There is a right of appeal by the person refused to the Secretary of State. All marriages solemnised within the British lines by any chaplain or officer or other person officiating under the orders of the commanding officer of a British *army serving abroad*, will be as valid in law as if they had been solemnised within the United Kingdom with a due observance of all the forms required by law.

Embassy and consular marriages.—The person before and by whom a marriage under the above-mentioned Act may be solemnised and registered in an embassy house in a foreign country, is either the ambassador himself or the officer for the time being performing his duties, or a secretary of the embassy appointed in writing for the purpose. Such a person, without any other warrant, is a "marriage officer." By embassy house is meant the house in which a British ambassador resides in a foreign country to the government of which he is accredited, or which is occupied by him in that country for the purposes of his embassy. If the marriage officer is also a consul, then every place within the precincts of the house in which for the time being he is resident, or of the building for the time being used as his office, will be the official house of the marriage officer. Such part of the official house of either the ambassador or consul as is open to the ordinary access of the public is deemed to be the office of the marriage officer. Where a marriage can be solemnised at a British Consulate in a foreign country, the leave of the ambassador is required before it can be solemnised in the embassy house of that country. If a marriage according to the local law of a foreign country would be valid by English law, then, before the marriage is solemnised in that country under the provisions of the above-mentioned Act, the marriage officer must be satisfied either—(*a*) That both

the parties are British subjects; or (*b*) if only one of the parties is a British subject, that the other is not a subject or citizen of the country; or (*c*) if one of the parties is a British subject, and the other a subject or citizen of the country, that sufficient facilities do not exist for the solemnisation of the marriage in the foreign country in accordance with the law of that country. If it appears to the marriage officer that the woman about to be married is a British subject, and that the man is an alien, he must be satisfied that the marriage will be recognised by the law of the foreign country to which the alien belongs.

Registration.—A consular officer cannot be required to attend at the solemnisation of a marriage solemnised in accordance with the local law unless the marriage is solemnised at the place where he is appointed to reside, nor unless the proper fee has been previously paid to him. Forthwith at the solemnisation of a marriage the consular officer must register it.

His Majesty's ships.—Marriages under the before-mentioned Act on board one of his Majesty's vessels may be solemnised by or before a commanding officer of such rank and of such vessel as is for the time being authorised for that purpose. For the purpose of such marriages the commanding officer will be, without warrant, the marriage officer. But before he solemnises a marriage he must be satisfied that, at the port or place where the marriage is solemnised, sufficient facilities do not exist for the solemnisation of the marriage on land, either in accordance with the local law of the country or in accordance with the Foreign Marriage Act.

Generally, it may be taken that the marriage of a British subject will be treated as valid in English law if valid by the local law of the place in which it is celebrated. But this rule has reference only to the formalities or ceremony made necessary to the validity of the marriage by the local law; it does not recognise as valid any marriage abroad which depends for its validity, at the place of its solemnisation, upon a local law as to the capacity of parties to marry, from the point of view of relationship or polygamy, which is inconsistent with the English law. Accordingly a British subject cannot, by going abroad and solemnising the marriage in a country the law of which permits such marriages, lawfully, from the point of view of the English law, contract a polygamous marriage in a country where such marriages are legal. By means of this rule the marriage law of this country is made effective.

In consequence of the difficulties which have so frequently arisen with regard to the mixed marriages of *British and French* subjects, it is important to here point out that in order that the marriage of a French subject may be valid according to French law, there must be no irregularity in the accomplishment of the formalities prescribed by the French law. As we have seen above, the English law is satisfied with a compliance of the requirements as to formality of the law of the country in which the marriage is celebrated. The French law, however, is not so complaisant, for it insists upon a compliance, wherever the marriage may be celebrated, of the formalities prescribed by its own law. An English person, therefore, who marries a French subject in England, or indeed in France, should see that these requirements are complied with; to fail therein may result in the marriage being void in France, and its fruit being there considered illegitimate. A knowledge of the necessity for caution is desirable not only

on the part of the well-to-do classes whose travels may bring them into contact with the French, but also on the part of what in France would be known as the bourgeois class. And it is, moreover, a fact that French mechanics and skilled workmen continually marry English shop-girls in England, take them over to France, get tired of them, and leave them to shift for themselves as best they may, replying to their entreaties for maintenance by a heartless reference to the French code. The following is an outline of the French requirements on this subject. In the first place, it must be borne in mind that French citizens may not marry without having previously published in France the notice of the marriage required by law, and without having obtained the consent of their parents or such other persons as are set forth in the law; for even though they reside in a foreign country, the French are subject to the laws of France as regards their status and capacity. The consent of parents or relations is essential to the validity of a marriage. But if the man has completed his twenty-fifth, or the woman her twenty-first year, absence of consent of parents and failure to serve certain specified intimations and requests therefor, are not sufficient grounds to have a marriage annulled, unless the circumstances of the case clearly show that the parties married abroad for the express purpose of escaping the provisions of the French law. Notice of the intended marriage must be published in the place of domicile in France of the party who is a French subject. The parties to the marriage must be of the age prescribed by the law: eighteen for the man and fifteen for the woman.

Their mutual consent to the marriage must be absolutely unconstrained, and neither of them must be already bound by a subsisting marriage. It should also be noted that an alien woman who marries a citizen of France becomes French by the mere fact of marriage, and that all children born of such marriage, even abroad, are French. Children of an Englishman domiciled in France, who has there married a Frenchwoman according to French law, can declare their English nationality on attaining twenty-one years of age. Athough a mixed marriage may be void by reason of irregularity, there is still an opportunity for the person prejudiced thereby to get some satisfaction. Any such heartless desertion as before referred to need not be the end of the affair, for there is still the refuge of what is known in French law as the system of putative marriages, a legacy of the canonical law to the code which succeeded it. In the Code we read: "If a marriage has been declared void, not only the parties thereto but the issue of the marriage shall nevertheless enjoy all civil rights resulting therefrom, *if the marriage was contracted in good faith;* if only one party was in good faith, only the party in good faith and the issue of the marriage shall be entitled to the civil right resulting therefrom." *See* DOMICILE; MARRIAGE; HUSBAND AND WIFE.

FORGED TRANSFERS.—One of the risks to which registered companies and purchasers of their shares are subject, is that the instrument by which a transfer is effected may be found to be a forged one. Apart from the serious inconvenience to which a forged transfer subjects the original and true owner of the shares, such a document may easily impose a serious liability and loss upon the company and the purchaser. When such companies were established it was a great object that shares therein should be capable of being easily transferred, and accordnigly the legislature provided for the keeping of a register of members, to accurately keep which the company must alter the register whenever there is a transfer of shares. By the Companies Act it is provided that the company may give certificates, these

to be *primâ facie* evidence of the title of the person therein named to the shares specified. By granting such certificate the company represents that it has transferred the shares specified to the person named in it, and that he is the holder of the shares. Though the company may be deceived and the representation is therefore not true, and though it may not have been guilty of any negligence, yet the company, and no one else, has the power to inquire into the transaction. This representation being one upon which the company knows that persons wishing to purchase shares will act, it results that all persons having *bonâ fide* acted thereon, and suffered damage, are entitled to recover from the company.

A leading case on this subject is the *Bahia and San Francisco Railway Company*, in which it appeared that the company had issued a certificate stating that the persons named therein were the registered holders of certain shares in the company. The persons so named in the certificate having sold the shares to a purchaser, who was thereupon registered by the company as the holder thereof, his name was afterwards removed from the register on its being discovered that the transfer to the persons named in the certificate was a forgery. The Court held that the giving of the certificate amounted to a statement by the company, intended by it to be acted upon by the purchasers of shares in the market, that the persons certified as the holders were entitled to the shares. The purchasers having acted on that statement by the company, the latter was estopped from denying its truth and became liable to pay to them, as damages, the value of the shares. Of course, it need hardly be mentioned that the forged transfer could not in any way affect the title to the shares of their original and rightful owner.

A company should therefore exercise great care when accepting transfers of shares for registration and before certifying the transfer, for, as we have seen, its liability in case of forgery may be a very serious one. A usual practice is for the company, directly the transfer is presented, to delay certification for two or three days, and in the meantime to write to the already registered holder giving him notice of the transfer, and informing him that unless he repudiates it by return of post the transferee will be registered in his stead as the holder of the shares. But the registered holder is under no legal obligation to reply to this letter, and consequently the company will not be relieved from liability for registration of a forged transfer in consequence of the silence of the registered holder. The net effect of the notice is its operation as a practical protection, for should a registered holder receive notice of a transfer of which his execution had been forged, he would, in the ordinary course of events, reply to the company's letter repudiating the transfer.

By the Forged Transfer Acts, 1891–92, a company is empowered to compensate purchasers of stocks and shares from losses by forged transfers, even though the circumstances of the particular case are such as to prevent the purchaser from successfully maintaining an action against the company. The Acts do not only apply to joint-stock companies, but extend to all local authorities, such as a town council, who have power to levy rates, and to any incorporated friendly, building, or other provident society. In any case where a company, or other body, issues shares, stocks, or securities transferable by an instrument in writing, or by an entry in its books or register, it

has power to make the compensation by a cash payment out of its funds for any loss arising out of a forged transfer or a transfer under a forged power of attorney. The company, if it thinks fit, may provide a fund to meet claims for such compensation. The manner in which this fund may be created is absolutely at the discretion of the company, but the Acts instance such modes as the following: by fees not exceeding the rate of one shilling on every £100 transferred (with a minimum charge equal to that for £25), to be paid by the transferee upon the entry of the transfer in the books of the company; or by insurance; or by reservation of capital; or by accumulation of income To provide compensation, the company has also power to borrow on the security of its property, but a local authority must repay money so borrowed within a period of five years. The company is, moreover, entitled to impose such reasonable restrictions on the transfer of its shares, stock, or securities, or with respect to powers of attorney for the transfer thereof, as it may consider requisite for guarding against losses arising from forgery. Where it makes compensation, the company has, without prejudice to any other rights or remedies, the same rights and remedies against the person liable for the loss as the person compensated would have had. The compensation may be paid whether the loss arose before or after the passing of the Act of 1891, and whether the transfer or power of attorney was forged before or after such time; and it makes no difference that the person receiving the compensation, or any person through whom he claims, has or has not paid any fee or otherwise contributed to any fund out of which the compensation is paid. *See* SHARES.

FORGERY at common law is a misdemeanour, and has been defined as the fraudulent making or alteration of a writing to the prejudice of another man's right. As instances of common law forgery may be mentioned the counterfeiting of a letter of credit, of a bill of lading, of an order of admission to see a prisoner committed for trial, of a testimonial as to character in order to obtain an appointment as a schoolmaster, and of a railway pass. But prosecutions for forgery are now generally based upon various statutes, and by these statutes the crimes of forgery and uttering are, in most cases, made felonies.

Generally.—Before proceeding to notice the special statutory provisions as to this offence, it will be convenient to notice some of those which are more general. Whoever, with intent to deceive or defraud, demands, receives, or obtains, or causes to be demanded, received, or obtained, or delivered or paid to any person, any money or property, by virtue of some forged or altered document, knowing the same to be forged or altered, is guilty of a felony. In the case of a statutory felony, every principal in the second degree, and every accessory before the fact, is punishable in the same manner as is the principal in the first degree; an accessory after the fact is liable to two years' imprisonment with hard labour; and every person who aids, abets, counsels, or procures the commission of the misdemeanour may be indicted and punished as a principal offender.

Special provisions are contained in various statutes with regard to various classes of forgery. Thus there is special provision as to the forgery of and uttering of forged seals of state; exchequer bills, bonds, and debentures, and indorsements thereof; notes and bills of exchange of the Bank of England and any other bank, and indorsements and assignments

thereof; wills, testaments, codicils, and testamentary instruments; deeds and bonds, and assignments and attestations and executions thereof; bills of exchange, acceptances and promissory notes, and indorsements and assignments thereof; undertakings, warrants, orders, authorities, or requests for the payment of any money, or for the delivery of any goods or chattels, or of any note, bill, or other security for the payment of money, or for procuring or giving credit, or any indorsement on or assignment of any such undertakings, warrants, orders, authorities or requests, or any accountable receipt, acquittance, or receipt for money or for goods, or for any note, bill, or other security for the payment of money, or any indorsement on or assignment of any such accountable receipt; drawing, making, signing, accepting, or indorsing any of the last-mentioned documents in the name of another; obliterating, adding to, and altering the signatures and crossings on cheques; the like to postal orders; stock and share certificates; certificates of birth and death. As to *bank-notes*, it should be noted that it is a felony for any one, without lawful authority or excuse (the proof whereof lies on the party accused), to purchase or receive from any other person, or have in his custody or possession any forged bank-note, bank bill of exchange, or bank post bill, or blank bank-note, blank bank bill of exchange, or blank bank post bill, knowing the same to be forged. Where the having any matter in the *custody or possession* of any person is expressed to be an offence, if any person has any such matter in his personal custody or possession, *or* knowingly and wilfully has any such matter in the actual custody or possession of any other person, *or* knowingly and wilfully has any such matter in any dwelling-house or other building, lodging, apartment, field, or other place, open or enclosed, whether belonging to or occupied by himself or not, and whether such matter is had for his own use or for the use or benefit of another, every such person is deemed and taken to have such matter in his custody or possession. In suspected cases a magistrate may issue a warrant to search premises and make a seizure.

Some cases.—It is as much a forgery to write the name of a fictitious person who has never existed, as to write the name of an actually existing person; but in such a case the name of the fictitious person must have been assumed for the purposes of fraud. And such a case would constitute a forgery, even if the object of the forgery could have been attained without its commission and by the use of the forger's own name only. It is not forgery for a man to use a fictitious name by which he has been known for many years. The intent to defraud may be proved generally; it is not necessary to prove an intent to defraud a particular person, or to prove that any one was in fact actually defrauded. The intent to defraud may be taken as proved, even in face of the fact that the person defrauded, or likely to be defrauded, declines to admit that he was or could be defrauded; and even if, under the particular circumstances, it was impossible to defraud him. Offering and uttering a forgery is proved simply by the fact of selling or otherwise disposing of it; it is not necessary to prove that it was offered or uttered as a genuine document. The intent to defraud must be proved from the whole of the circumstances of the case. That the defendant had passed other forged notes, or had given a false name and address, would be facts from which such an intent could be inferred.

In civil actions.—In the case of probate being granted in respect of a forged will, a debtor of the deceased who has paid the executor under that probate, and has obtained a discharge from him, will be held to be absolutely discharged as against any person who may lawfully claim to represent the deceased. Any one who cashes a bank-note, which is subsequently discovered to be a forged one, is entitled to recover the money from the person for whom he cashed the note, and this generally would also be the position of one who discounts a forged bill. And so also, generally speaking, any person who pays money under a forged instrument, if he exercised all proper caution and has not acted in such a manner as to prejudice other innocent parties to the instrument, is entitled to recover the same from the person to whom he paid it. No man is expected by the law to assume that every one he does business with is likely to commit a crime; he need only act in all things as should a prudent man of business.

FORWARDING AGENT.—A person, known in the United States as a forwarding merchant, who receives and forwards goods, taking upon himself the expenses of transportation, in respect of which and for his services he receives payment from their owners. He is not a "mercantile agent" within the meaning of the Factors Act, and consequently cannot make a valid pledge of goods entrusted to him in the ordinary course of business for the purposes of despatch or transit. When his business is confined to the forwarding of goods by sea, he would more appropriately be called a shipping agent; but the term forwarding agent may be correctly said to include even those agents whose chief business it is to make engagements for the shipment of goods on behalf of merchants either at home or abroad. In the United States, where transit by land is by more extensive and complicated means than in England, a forwarding agent may easily have a business solely confined to inland transportation. But whether a forwarding agent or a shipping agent, he has no concern in the vessels or conveyances by which the goods are transported; nor has he any interest in the freight. Nor is he, in law, a common carrier, and consequently he is only under an obligation to use ordinary diligence in providing that the goods entrusted to him are transported by responsible persons and the appropriate means. He is, in effect, only a warehouseman of the goods whilst they are in his possession, and does not therefore insure their safety.

As a shipping agent he sometimes also fills the position of buying agent on behalf of English or foreign principals, and under such circumstances there may arise some question as to his personal liability for freight. Where his principal is a foreign one, it may be said that as a general rule the credit of the principal is not pledged and that the agent is alone liable; but exception to this rule will arise in any case in which there is a clear intention that the liability is to be incurred by the principal and not by the agent. Where the principal is an English one, the agent will be personally liable if the contract is not entered into expressly for some one else, or in such terms as to indicate to the party that the person making it is only acting as an agent in the matter. Merely to insert the name of a principal in the contract without anything more will not exclude the agent from personal liability; he should expressly contract as agent. And if a person purports without authority to enter into an engagement on behalf of another, he will be liable for damages

in case the engagement is repudiated by that other person. Where a forwarding agent ships goods in his own name under a bill of lading, and has himself paid the freight, he is in a position to personally maintain an action for non-delivery.

In cases of STOPPAGE IN TRANSITU it is often a difficult question to determine whether the transit of goods is at an end when they have come into the hands of a forwarding agent. Generally as to stoppage in transitu, reference should be made to the article on that subject; but here it will be convenient to refer to a few points of interest. Where a seller of goods delivers them to the buyer's agent with the intention that the latter should forward them to another place as their place of destination, the transit in such a case will not end until the goods have reached that place of destination. Where that place of destination has been named by the buyer to the seller at the time of the sale there can be little difficulty in the position. The forwarding agents and other parties who intervene for the purpose of forwarding the goods to their destination have them in their charge for that purpose only. But where there has been no notification to the seller as to the further destination of the goods, the transit will be at an end as soon as delivery has been made to the buyer's agent, whether he be a forwarding agent or not. Goods in the custody of a forwarding agent who is awaiting instructions as to their ultimate destination, though they are really regarded by him and his principal as being in course of transport, will be considered by the law as having already reached their destination; but the transit would not be considered at an end if, at the time of sale, the seller had received notification from the buyer of an intended temporary custody pending further transport, and the agent knew where to forward the goods without further instructions. In business, the word "'destination' means that you must give not only the name of the place to which, but also the name of the person to whom, goods are to be sent."

APPENDIX

CORRUPT COMMISSIONS.—The corrupt giving of, or agreeing to give, or receipt of a commission or bribe to or from another's agent is now made a misdemeanour by the Prevention of Corruption Act, 1906. Upon conviction or indictment for this offence the guilty person is liable to imprisonment, with or without hard labour, for a term not exceeding two years, or to a fine not exceeding £500, or to both such imprisonment and such fine. If the conviction is by magistrates on summary conviction, then the punishment is imprisonment, with or without hard labour, for a term not exceeding four months, or to a fine not exceeding £50, or to both such imprisonment and such fine. Thus has the legislature attempted to stamp out the practice of illicit and secret commissions, so rife, at the passing of the above enactment, in modern commercial life. But a prosecution cannot be instituted, in England or Ireland, without the consent of the Attorney-General or Solicitor-General. In Scotland the similar consent is not requisite.

An offence is committed if, in the words of the Act: (*a*) An agent corruptly accepts or obtains, or agrees to accept or attempts to obtain, from any person, for himself or for any other person, any gift or consideration as an inducement or reward for doing or forbearing to do, or for having after the passing of the Act done or forborne to do, any act in relation to his principal's affairs or business, or for showing or forbearing to show favour or disfavour to any person in relation to his principal's affairs or business; or (*b*) a person corruptly gives, or agrees to give, or offers any gift or consideration to any agent as an inducement or reward for doing or forbearing to do, or for having, after the passing of the Act done or forborne to do any act in relation to his principal's affairs or business, or for showing or forbearing to show favour or disfavour to any person in relation to his principal's affairs or business; or (*c*) a person knowingly gives to any agent, or if an agent knowingly uses with intent to deceive his principal, any receipt, account, or other document in respect of which the principal is interested, and which contains any statement which is false or erroneous or defective in any material particulars, and which to his knowledge is intended to mislead the principal. The expression "consideration" here includes valuable consideration of any kind; the expression "agent" includes any person employed by or acting for another; and the expression "principal" includes an employer.

The working of the Act.—Undoubtedly the evil against which the above statute was directed was, and very largely continues to be, one very tolerantly regarded by the public at large and even by the commercial element in the community which is most closely affected. So prosecutions under the Act have not been so frequent as its promoters probably believed would be the case. In order, therefore, to assist the effective operation of the law, an organisation called "The Secret Commissions and Bribery Prevention League," 3 Oxford Court, Cannon Street, E.C., has been formed, and is now in full working order. Sir Edward Fry, to whose initiative the Act itself was very largely due, is the president; and the importance and

influence of the League is further evidenced by the fact that it includes amongst its members some of the best-known names in the commercial world and many large limited liability companies and trade associations. Its general object may perhaps be shortly stated as to stand in the same relation to the Act, the subject of this article, as the Royal Societies for Prevention of Cruelty to Children and Animals stand in relation to certain other legislation. It seeks to effect that object by spreading knowledge of the Act, and therewith a wholesome awe of the League's own activities; in advising persons who believe themselves to have grounds of complaint; in investigating doubtful cases, and in initiating proceedings with an authority which a private person cannot wield. *See* AGENCY.

CRIMINAL APPEAL.—A person convicted on indictment may now appeal, under the Criminal Appeal Act, 1907, to the Court of Criminal Appeal, a court created by that statute. Without leave of any court he may appeal against his conviction on any ground of appeal which involves a question of law alone. Where his appeal is on a ground which involves a question of fact alone, or a question of mixed law and fact, or on any other ground which appears to the court to be a sufficient ground of appeal, he can appeal only if he can obtain a certificate of the judge who tried him that it is a fit case for appeal, or with the leave of the Court of Criminal Appeal. An appeal against a sentence is not possible except by leave of the Court of Criminal Appeal, and then only when the sentence is not fixed by law. An appeal can succeed only if the Court of Criminal Appeal think—(*a*) that the verdict of the jury should be set aside on the ground that it is unreasonable or cannot be supported having regard to the evidence; or (*b*) that the judgment of the court before whom the appellant was convicted should be set aside on the ground of a wrong decision of any question of law; or (*c*) that on any ground there was a miscarriage of justice. The Court of Criminal Appeal has power, however, to dismiss the appeal, notwithstanding that they are of opinion that the point raised in the appeal might be decided in favour of the appellant, if they consider that no substantial miscarriage of justice has actually occurred. On an appeal against sentence the Court may quash the original sentence and substitute another. Where, on a conviction, an order for restitution of property has been made, such order is suspended—(*a*) in any case until the expiration of ten days after the date of the conviction; and (*b*) in cases where notice of appeal or leave to appeal is given within ten days after the date of conviction, until the determination of the appeal. Notice of appeal must be given within ten days after the date of conviction. Where the appellant has insufficient means, and it appears to the court desirable in the interests of justice that the appellant should have legal aid, such aid may be assigned to the appellant at the cost of the Crown.

DAIRIES.—In order to prevent the spread of infectious disease through milk, the Public Health Act, 1907, which does not include in its operation the County of London, contains certain provisions of considerable importance to the trade. The local authority has now power to take action if its medical officer certifies that any person is suffering from infectious disease which the medical officer has reason to suspect is attributable to milk supplied within the district. Thereupon it may require the dairyman supplying the milk to furnish to the medical officer within a prescribed time

a complete list of all the farms, dairies, or places from which his supply of milk is derived or has been derived during the last six weeks, and, if the supply, or any part of it, is obtained through any other dairyman, it may make a similar requisition upon that dairyman. For this list the dairyman is entitled to be paid sixpence, and, if it contains not less than twenty-five names, a further sum of sixpence for every twenty-five names contained in the list. A dairyman who fails to comply with such a requisition as the foregoing is liable to a penalty of £5. A dairyman is also under an obligation, subject to a penalty, to notify to the local authority all cases of infectious disease among persons engaged in or in connection with his dairy, as soon as he becomes aware or has reason to suspect that such infectious disease exists.

DILAPIDATED HOUSES.—Where a dwelling-house is in a state so dangerous or injurious to health as to be unfit for human habitation the local authority has now power, under the Housing and Town Planning Act, 1909, to prohibit its use as for human habitation until it is rendered fit for that purpose. An owner who is aggrieved by such a prohibition may appeal to the Local Government Board within fourteen days after the order prohibiting the use of the house has been served upon him. The tenant, unless he has himself made the house unfit by his wilful act or default, may be made an allowance by the local authority on account of the expense of his removal, and this allowance is recoverable from the owner. Should the house remain in its unfit condition for three months after its closure by the local authority, the latter, after giving notice to the owner and an opportunity for him to be heard, must order its demolition, unless the necessary steps are being taken with all due diligence to render it fit. The local authority has a like power of demolition in the case of a building, being or being part of such a dwelling-house, is a nuisance or dangerous or injurious to the health of the public or of the inhabitants of the neighbouring dwelling-houses. The three months may be extended to six if the owner undertakes to execute forthwith the works necessary to render the house fit for human habitation, and the local authority consider that it can be so rendered fit.

DISTRESS (in continuation of article in Vol. II.).—The right of a landlord to distrain for rent due from his tenant upon the goods of the latter's lodgers and sub-tenants has now been considerably restricted by the Law of Distress Amendment Act, 1908. Wherever and so far as this Act is applicable, the Lodgers' Goods Protection Act, 1871 (set out in Vol. IV., pp. 81-3), may be considered to be repealed.

Who is a sub-tenant or lodger.—The term sub-tenant or lodger, as used in this article, comprises (*a*) any under-tenant liable to pay by equal instalments not less often than every actual or customary quarter of a year a rent which would return in any whole year the full annual value of the premises or of such part thereof as is comprised in the under-tenancy; or (*b*) any lodger; or (*c*) *any other person whatsoever not being a tenant of the premises or of any part thereof, and not having any beneficial interest in any tenancy of the premises or of any part thereof.* The fact that it includes the "other person" must not be overlooked, and so, in reading this article, the words "superior landlord" includes "landlord" in cases where the goods seized are not those of an under-tenant or lodger, and the words "sub-tenant," "under-tenant," or "lodger" refer to that "other person" who may not in fact have any interest by tenancy or occupation or otherwise in the premises.

The Act applies when a superior landlord levies a distress on any

furniture, goods, or chattels of such a sub-tenant or lodger for rent due to such superior landlord by his immediate tenant, *i.e.* by the person under whom the sub-tenant or lodger himself holds.

Procedure by sub-tenant or lodger.—A distress having thus been levied, the sub-tenant or lodger, in order to prevent the sale of his goods, must serve the superior landlord or his bailiff or other agent to make the distress with a declaration. This declaration should be in writing, but need not follow the form prescribed by the Statutory Declarations Act, 1835 (*Rogers* v. *Martin*), and should be made by the sub-tenant or lodger. It may be properly made on behalf of a firm by one partner signing in his own name (*Rogers* v. *Martin*). It should set forth: (i.) that the immediate tenant of the superior landlord has no right of property or beneficial interest in the goods distrained or threatened to be distrained upon; (ii.) that such goods are the property or in the lawful possession of the sub-tenant or lodger; (iii.) that they are not goods or live stock to which the Act does not apply—as to this, see below; (iv.) where applicable, the amount of rent (if any) then due from the sub-tenant or lodger to his immediate landlord, and the times at which future instalments of rent will become due, and the amount thereof, together with an undertaking to pay to the superior landlord any rent so due or to become due to his immediate landlord, until the arrears of rent in respect of which the distress was levied or authorised to be levied have been paid off; and appending (v.) a correct inventory, duly signed, of the goods referred to in the declaration. It is a misdemeanour to make a false declaration. A distress proceeded with after the above undertaking has been given, and the rent (if any) then due has been duly tendered, is illegal, and the sub-tenant or lodger may forthwith obtain an order from a magistrate for the recovery of the goods. The superior landlord, bailiff, or agent is also liable for damages in a suit at law. Payment of rent by a sub-tenant or lodger under the foregoing circumstances operates as though it had been a payment of the rent to the landlord under whom he holds.

Goods to which the Act does not apply.—Such goods are—(1) (*a*) those of the husband or wife of the tenant in arrear; (*b*) goods comprised in a bill of sale, hire purchase agreement (to which the tenant is a party, *Shenstone* v. *Freeman*), or settlement made by the tenant; (*c*) goods in the possession, order, or disposition of the tenant by the consent and permission of the true owner under such circumstances that the tenant is the reputed owner thereof—a phrase which does not affect goods let to the wife of a tenant under a hire purchase agreement (*Rogers Eungblut* v. *Martin*), though a piano let to the lessee of a theatre under a hiring agreement comes within it, there being no custom that pianos are so constantly let to lessees of theatres for theatrical purposes as to exclude the doctrine of reputed ownership (*Chappell* v. *Harrison*); (*d*) live stock to which section 29 of the Agricultural Holdings Act, 1908, applies: (2) (*a*) goods of a partner of the immediate tenant; (*b*) goods (not those of a lodger) upon premises where any trade or business is carried on in which both the immediate tenant and the under-tenant have an interest; (*c*) goods (not those of a lodger) on premises used as offices and warehouses where the owner of the goods neglects for one calendar month after notice (which must be given in like manner as a notice to quit) to remove the goods and vacate the premises; (*d*) to goods belonging to and in the offices of any company or corporation on premises the immediate tenant whereof is a director or officer, or in the employment of such company or corporation. A magistrate, upon application by either of the parties concerned, can determine whether any goods come within (2) above.

Exclusion of certain under-tenants.—The Act does not apply to an under-tenant where the under-tenancy has been created in breach of a covenant or written agreement between the superior landlord and his immediate tenant. Nor does it where the under-tenancy has been created under a lease existing on the 1st July 1909 contrary to the wish of the landlord on that behalf, expressed in writing and delivered at the premises within a reasonable time after the circumstances have come, or with due diligence would have come, to his knowledge.

To avoid distress.—With this end in view a superior landlord may serve upon an under-tenant or lodger a notice (by registered post addressed to the under-tenant or lodger upon the premises) stating the amount of arrears of rent due from the immediate tenant, and requiring all future payments of rent, whether the same have accrued due or not, by such under-tenant or lodger shall be made direct to the superior landlord until such arrears shall have been duly paid. Such a notice operates as a transfer to the superior landlord of the right to recover, receive, and give a discharge for such rent.

DOGS (*see* also article on page 175).—The present legislation on this subject is the Dogs Act, 1906, together with, in regard to cruelty, the Protection of Animals Act, 1911, for which see the article on ANIMALS. The owner of a dog cannot now plead that the dog is entitled to its bite, where cattle are concerned, for he is liable for injury done to any cattle (including sheep, horses, mules, asses, goats, and swine) without the owner of the cattle having to show a previous mischievous propensity, or the dog owner's knowledge of such propensity; or that the injury was attributable to neglect on the part of the owner of the dog. The occupier of a house or premises where the dog is kept is presumed to be the owner, unless he prove the contrary; and if there are more occupiers than one, the occupier of the part of the premises where the dog is kept is *primâ facie* liable. If the damages claimed are under £5, they may be recovered as a civil debt under the Summary Jurisdiction Acts. Where the dog is proved to have injured cattle, or chased sheep, then it may be dealt with under the Dogs Act, 1871, whereby any one can complain to a Court of Summary Jurisdiction that the dog is dangerous or not kept under proper control, and on inquiry the Court has power to order the dog to be kept under proper control or destroyed. The penalty for disobeying is 20s. a day until the order of the Court is complied with.

Collars.—The Board of Agriculture has power to make orders "for prescribing and regulating the wearing by dogs while in a highway or in a place of public resort, of a collar with the name and address of the owner inscribed on the collar, or on a plate or badge attached thereto." But by an order dated 22nd October 1906 the Board has exempted packs of hounds, dogs being used for sporting purposes, the capture of vermin, or driving or tending cattle or sheep. *Stray dogs.*—The Board can also make orders "with a view to the prevention of worrying of cattle, for preventing dogs, or any class of dogs, from straying during all or any of the hours between sunset and sunrise." If the owner disobeys the dog may be seized and treated as a stray dog. This is in addition to the powers under the Diseases of Animals Act, 1894, as to muzzling and keeping under proper control; and the seizure, detention, and disposal (including slaughter) of stray and unmuzzled dogs, or those not under proper control. The expenses under this Act are recoverable from the owner of the dog. Whether the dog is under proper control or not, is a question of fact and not of law. *Wren* v. *Pocock*, 34 L. T. 679.

Orders under the Act have now been made and published. Where a police officer has reason to believe a dog is a stray, he can seize and detain it until the owner pays the expenses incurred, and if the dog is wearing a collar with the name of the owner, notice must be given to the owner. Seven days after seizure or notice to the owner, and the owner not having claimed the dog, and paid the expenses, the police may sell or destroy the dog. A register is kept of all dogs sold or destroyed, open to any one on payment of one shilling. A dog cannot be sent by the police to a dogs' home unless a similar register, open to the public, is kept there. If any one takes home a stray dog, he must send it to its owner, or give notice to the police with particulars, otherwise he is liable to a penalty not exceeding 40s.

Prevention of rabies, &c.—The Importation of Dogs Order, 1901, provides quarantine for dogs brought into Great Britain, except from Ireland, the Channel Islands, and the Isle of Man. The owner is required to take out a licence allowing him to land the dog, and then keep it for six months in quarantine in a place where the Board of Agriculture's Inspector can examine it, and under the care of a certified veterinary surgeon. Should the owner wish to remove the dog to other quarters or export it, a fresh licence is required. Performing dogs and those to be exported within forty-eight hours of landing do not require this fresh licence. Conditions may be inserted in a licence as to detention, isolation, the person by whom and the premises on which a dog is to be kept during quarantine; as to the dog's movements for six months after landing; as to suitable crates for travelling; and as to muzzling, notice of death, production of licences, and such matters during that time. A licence can be withdrawn on refusal to comply with its provisions. If the dog has been illegally landed, notice is given by the Inspector that the dog must be isolated or exported. He can seize the dog, and if not claimed by the owner and expenses paid within ten days, may destroy or otherwise dispose of it. Dogs on board vessels in port must be tied up and muzzled, or locked up, and notice of the death or loss of such dog must be given to the Inspector. The penalties under the Order are: (*a*) the owner is liable under the Customs Act for illegally importing prohibited goods; (*b*) under the Diseases of Animals Act, 1894, the owner is liable to a fine not exceeding £20—if more than four animals, up to £5 per animal, and an additional fine for offences in regard to carcases, litter, &c.

The Rabies Orders, 23rd March 1897, provides for immediate steps to prevent the spread of the disease when it has appeared. Notice of the disease must be given to a constable, who telegraphs to the Secretary of the Board of Agriculture and gives notice to the Inspector of the local authority. The Inspector must act at once on receiving notice or where he himself suspects a case. The local authority can give notice by placard during the prevalence of the disease, and can also have every dog in its district slaughtered, which is diseased or suspected of disease, or has been bitten by a dog so diseased or suspected; or isolate the suspected dogs and provide for the removal of carcases. Suspected dogs are only to be moved under licence; weekly returns must be made to the Board of Agriculture and a register kept.

An additional provision as to stray dogs is provided by the Order,

whereby the local authority can prevent dogs, not under the control of some person, from being at large if a mad dog or one suspected of being mad is found within their jurisdiction. The penalty is a fine of 20s., and the dog can be dealt with as a stray dog.

Wherever the Board of Agriculture makes Orders in regard to dogs, the local authorities have to make regulations and enforce the carrying out of these Orders.

ENTIRE ANIMALS may not be turned out upon commons except in accordance with the regulations of the Board of Agriculture (Commons Act, 1908).

ESPIONAGE.—That there has been, during the last few years, an increase in this country of espionage by the agents of foreign powers would seem to have been recognised by the Legislature, inasmuch as in 1911 the old Official Secrets Act of 1889 was repealed and re-enacted with important amendments by the Official Secrets Act of that year. This statute has not only a political interest. To that very large class of employees in or in connection with Government works, or contracts under the Government, it has a very practical concern. The spies generally come into contact with them and seek to obtain from them the required information. This class should therefore have some special knowledge of their legal obligations in this respect.

Prohibited Places.—Certain works and places are legally known as "prohibited places." Such include: (*a*) any work of defence, arsenal, factory, dockyard, camp, ship, telegraph or signal station, or office belonging to the King, and any other place belonging to him used for the purpose of building, repairing, making, or storing any ship, arms, or other materials or instruments of use in time of war, or any plans or documents relating thereto; and (*b*) any place not belonging to His Majesty where any ship, arms, or other materials or instruments of use in time of war, or any plans or documents relating thereto, are being made, repaired, or stored under contract with, or with any person on behalf of His Majesty, or otherwise on behalf of His Majesty; and (*c*) any place declared by a Secretary of State to be a prohibited place; and (*d*) any railway, road, way, or channel, or other means of communication by land or water (including any works or structures being part thereof or connected therewith), or any place used for gas, water, or electricity works or other works for purposes of a public character, or any place where any ship, arms, or other materials or instruments of use in time of war, or any plans or documents relating thereto, are being made, repaired, or stored otherwise than on behalf of His Majesty, which is for the time being declared by a Secretary of State to be a prohibited place. From this it will be seen that not only Government and contractors' works may be prohibited places, but even certain works, manufactories, and warehouses not connected with the Government.

Spying.—To approach, enter, or even be in the neighbourhood of a prohibited place "for any purpose prejudicial to the safety or interests of the State" is to commit a felony—punishable with penal servitude for not less than three and not exceeding seven years. To obtain a conviction it is not even necessary to prove that the accused person was guilty of any particular act tending to show the above-mentioned purpose. It is sufficient that such purpose appears from the circumstances of the case, or his conduct, or his known character as proved. If an article or information relating to or used in a prohibited place, or anything in such a place, is made, obtained, or communicated by one not lawfully authorised, it is to be presumed to have been made, obtained, or communicated for the above-mentioned purpose unless the contrary is proved. All of the foregoing also applies where a person, for the above-mentioned purpose—(*a*) makes a sketch, plan, model, or note which is calculated to be, or might be, or is intended to be, directly or indirectly useful to an enemy; or (*b*) obtains or communicates to any other person any sketch, plan, model, article, or note, or other document or information which is calculated to be, or is intended to be, directly or indirectly useful to an enemy.

Wrongful Communication of Information.—The information here referred to includes such as may be contained in a sketch, photograph, plan, model, specimen, article, note, or other form of representation of a place or thing. The law particularly affects a person—(*a*) who makes or obtains such information in contravention of the Act; (*b*) who is in possession of the information by reason of confidence entrusted in him by some person holding office under His Majesty; (*c*) who has obtained the information owing to his position as holding or having held office under His Majesty; (*d*) holding or having held a contract on behalf of His Majesty; or (*e*) in the employ or formerly in the employ of a person who holds or has held such office or contract. Such a person is guilty of a misdemeanour if he—(*a*) communicates the information to any person, other than a person to whom he is authorised to communicate it, or a person to whom it is in the interest of the State his duty to communicate it; or (*b*) retains the information in his possession or control when he has no right to retain it or when it is contrary to his duty to retain it. It is also a misdemeanour for any person to receive such information knowing, or having reasonable ground to believe, at the time he receives it, that it is communicated to him in contravention of the Act, unless he can prove that the communication thereof was contrary to his desire. The penalty is imprisonment with or without hard labour for a term not exceeding two years, or a fine, or both imprisonment and fine.

Generally.—Though a prosecution for any of the foregoing offences cannot be instituted except by or with the consent of the Attorney-General, yet a suspected person can be arrested and remanded in custody pending the obtaining of that consent. Attempts or incitement to commit these

offences are punished in like manner as the offences themselves. But persons charged with an offence which is a felony may, if the circumstances warrant it, be convicted for an offence which is only a misdemeanour. Harbouring spies is made an offence punishable with imprisonment. Search warrants may be issued where there is reasonable ground for suspecting that an offence has been or is about to be committed.

FERTILISERS AND FEEDING STUFFS (*see* also article in Vol. II.). —The Act of 1906 further provides that the seller of an artificially prepared article of food for cattle or poultry must give the purchaser an invoice, stating the name of the article, whether prepared from one substance or seed or more than one, and if otherwise prepared than by being mixed, broken, or chopped, the respective percentages of oil and albuminoids. The invoice is a warranty of these facts, but so far as regards the percentages only beyond the prescribed limits of error. If sold under a name or description implying that it is prepared from two or more particular substances or the product of a seed or seeds, and without any indication that it is mixed with another substance or seed, there is an implied warranty that it is pure. There is also an implied warranty that the food is suitable for cattle or poultry. Also any statement in the invoice or in a circular or advertisement, of the percentages of the chemical or other ingredients in a fertiliser; or the nutritive and other ingredients of a food for cattle or poultry is a warranty by the seller. Where the fertiliser or food for cattle or poultry is of two or more ingredients, mixed by request of the purchaser, it is sufficient if the invoice contains the percentages of the several ingredients before mixture and a statement that they have been mixed by request of the purchaser. The Board of Agriculture appoints a chief analyst who is not to engage in private practice. Every county and borough council appoints an agricultural analyst and official samplers. These councils may also appoint a deputy agricultural analyst to act in cases of illness, incapacity, or absence. The appointments are subject to the approval of the Board of Agriculture. The agricultural analyst may not engage in any trade, manufacture, or business of fertilisers or food for cattle or poultry while holding office.

Every purchaser taking a sample within ten days after delivery, or receiving the invoice, if later, may, on payment of the prescribed fee, have the sample analysed. An official sampler, at the request of the purchaser and on payment of the fee, is bound to, or he may without request, take a sample of the article sold or exposed or kept for sale, but, if sold, before the ten days after delivery or receipt of the invoice. If the sample is taken for civil or criminal proceedings, it must be divided into three, each part marked, sealed, and fastened up; two parts being sent to the agricultural analyst and one to the seller. Such analyst (1) if the sample has not been divided, marked, sealed, &c., as mentioned, sends a copy of his certificate to the person submitting the sample; (2) but, if divided, he analyses one of the parts sent to him, retains the other, and sends his certificate in the prescribed form to the person submitting the sample, to the purchaser, seller, and such other persons as may be prescribed, and reports to the Board of Agriculture. If he does not know the name and address of the seller, he sends the copy to the purchaser to be forwarded. At the hearing of any proceedings, the production of the certificate of the agricultural analyst, or the chief analyst,

as the case may be, is sufficient evidence of the facts therein, unless the defendant requires the analyst to be called as a witness; but this will not apply (1) if the sample has not been taken in the prescribed manner or (2) not divided into parts and these marked, sealed, and fastened up as before-mentioned. If during proceedings any party objects to the certificate of the agricultural analyst, the party, on payment of the fee fixed by the Treasury, is entitled to have the part retained analysed by the chief analyst and get his certificate thereon. With the sample sent to the analyst is to be sent the invoice, or a copy of the invoice, or of any prescribed part thereof.

The Board of Agriculture can make Regulations (*a*) as to any matter to be prescribed; (*b*) as to the qualifications for agricultural analysts, their deputies, and official samplers; (*c*) as to the manner of analysis; (*d*) as to the manner of taking and dealing with samples; (*e*) generally for the purpose of carrying out the Act. But these are not to affect the right of a purchaser to have a sample of fertiliser or food for cattle or poultry analysed, when taken by him or at his request otherwise than in accordance with the regulations. These regulations must be laid before both houses of Parliament.

The councils appointing an official may make a joint appointment, the expenses to be apportioned. The council may subscribe to any agricultural body or association causing samples to be taken for analysis by the agricultural analyst, and may fix the fees for analysing or sampling. The penalties for breach of duty by the seller will be found in the original article, but no one can be convicted of causing or permitting any invoice or description to be false to the prejudice of the purchaser who proves (*a*) that he did not know nor could with reasonable care have ascertained the falsity; (*b*) that he purchased with a written warranty or invoice, from a person in the United Kingdom, which contained the falsity and he had no reason to believe at the time he sold that the statement was false and he sold it in the state he purchased it. It is, however, no defence to allege that the purchase was only for analysis and the purchaser was not prejudiced. A prosecution cannot be started without the consent of the Board of Agriculture, notwithstanding some preliminary steps may have been taken in Ireland (*Hill* v. *Phœnix Veterinary Supplies Co.*), and after the retained part has been analysed by the chief analyst and a certificate given by him. The summons must state particulars of the offence, the name of the prosecutor, be returnable not less than fourteen days from service, and be served with a copy of the certificate.

Any person who fraudulently tampers with an article in order that a sample taken under this Act shall not correctly represent the article, or tampers with any sample taken under the Act, is liable on summary conviction to a fine of £20 or six months. If the owner or person in charge of the fertiliser or food for cattle or poultry sold or intended to be sold refuses to allow the official sampler to take a sample for analysis, or the purchaser refuses to give him the invoice or a copy thereof or of a prescribed part, the fine is £10. Subject to the provisions as to the consent of the Board of Agriculture, a prosecution may be instituted by the person aggrieved, the Council of a county or borough or any body or association authorised by the Board. A prosecution for causing or permitting an invoice or description to be false cannot be instituted after three months from receipt of the invoice by the purchaser, nor unless a sample has been taken followed by analysis and certificate as provided. The proceedings may be before the court where the purchaser resides or carries on business,

or before the court where the invoice or description was given, and the defendant can appeal to quarter-sessions.

"Cattle" means bulls, cows, oxen, heifers, calves, sheep, goats, swine, and horses, and the Act applies to both wholesale and retail sales, and to Scotland and Ireland.

Regulations dated 1907.—The purchaser may appoint an agent in the prescribed form. If the sample is sent for analysis, the invoice or a copy or part must also be sent, also any circular or advertisement of the seller describing the article, if it is desired that such be taken into consideration in the certificate. But the name, address, or means of identity of the seller may be left out. The person sampling is to give three days' notice of the place and time of sampling. If the seller is not present the sample is to be taken in the presence of a witness. Fertilisers in bags or packages if under 1 ton, two sample bags; between 1 and 2 tons, three sample bags; between 2 and 3 tons, four sample bags; and above the latter quantity, one bag for every ton or part of a ton up to 10 bags—taken from different parts of the consignment. These bags are to be emptied separately on a dry floor, the material worked up with a spade, and one spadeful taken from each, mixed together, and a 2 to 4 lb. sample taken. If delivered in bulk a like number of portions are to be taken from different parts, mixed together, and a 2 to 4 lb. sample taken. If it is bulky material, such as shoddy or refuse hair, portions are to be taken from selected bags or from the bulk, the matted parts torn up, the material well mixed and a 3 lb. sample taken. If the parties agree, the sampling may be done by sampling spade, spear, or tube (24 inches long and 2 inches in diameter). A double number of bags must be tried, the parts taken well mixed and a 2 to 4 lb. sample taken. As to feeding stuffs. If consisting of grain or meal, deal in the same way as the fertiliser. If cakes, take from different parts of the consignment of under 2 tons, 5 cakes; 2 to 5 tons, 10 cakes; 5 to 50 tons, 15 cakes; above 50 tons, 25 cakes. Put these through a cake-breaker, or, after breaking, through a 1½ inch sieve, mix the resulting material, and take a 6 lb. sample. Another way is to take three strips across the middle of each sample cake, and each part of sample will contain one of these. If part of the consignment is mouldy or sour or unsuitable for foodstuff, take separate samples from the bad and good parts, estimate the amount of each, and inform the analyst in writing. If the consignment is fluid or semi-fluid, take three packages, and stir or shake the contents, take portions and mix them in a clean vessel, and take a 2 to 4 lb. sample therefrom. Where the whole consignment is under 2 cwts., take a representative sample large enough to divide into three parts for analysis. The sampling must be done as quickly as is reasonably possible so as not to expose the material too long to the air. Each part for analysis will be put in a dry, clean bottle, jar, or tin. To prevent tampering, these packets are sealed, initialled by the sampler, and the purchaser and seller if so desiring, and the name of the article, date, place, and numbers should be written on. If the sample is taken in the presence of the purchaser and seller and initialled by both it will be deemed correct. If for civil or criminal proceedings, the sample is divided into three parts, and each sealed up and marked; two are sent to the agricultural analyst and one to the seller.

FOREIGN COMMERCIAL TRAVELLING AND SAMPLES FOR ABROAD (*see* also article in Vol. II.).—We propose to summarise under

this heading, in continuation of the original article, the regulations which are expected to be observed by commercial travellers in British India, the British Colonies, and in Foreign Countries. In different parts of the world, as we have already seen, a variety of rules and restrictions are in force, in reference both to licences and to samples of the goods traded in. With reference to **British India**, in none of the Provinces is it necessary for the commercial traveller to provide himself with a licence for the pursuance of his calling, but there are a few isolated instances of States where the commercial traveller from abroad must obtain a pass from the Political Agent, or the Durbar. This regulation obtains in *Manipur* and *Baghelkand*. It is to be noted, however, that such passes are, as a rule, easily obtainable by any persons of respectability. It is stipulated with regard to the *Sirohi* State that each traveller must be accompanied by a guide, as a safe-conduct, and for the protection of property. In the maritime provinces of *Bombay*, *Madras*, *Bengal*, and *Burmah*, samples of merchandise are subject to import duty if of commercial value, but not otherwise. A drawback on the import duty to the extent of seven-eighths is allowed on exportation within three years. In the majority of the *Native States* duty is payable on the value of the goods actually sold, the deposit taken on the samples being returned if the goods are not disposed of. The rule of a reimbursement of seven-eighths of the duty on exportation also holds good. In *Baroda*, samples valued at more than one rupee are liable to the ordinary Customs duty of the State; while in *Karauli* and *Baratpur* passes are issued, without charge, entitling the commercial traveller to free entry for his goods, such permits remaining valid for a limited period, on the expiry of which the goods become liable. It has just been announced by the agent to the Governor-General in *Baluchistan* that a rebate is granted by the North-Western Railway on goods exported to or coming from Persia by the Rushki-Seistan trade route, and booked from or to Karachi, the Punjab, or the United Provinces. *Railway Fares and Transport.*—No Indian railway allows any reduction in fares to commercial travellers, and any concession in regard to the carriage of luggage or samples, while allowed by a limited section of the railway system of the country, is even in such cases liable to restrictions.

The British Colonies.—In the *Australian Commonwealth* the ordinary rates of import duty are levied on samples carried by commercial travellers, but the amount paid is regarded as a deposit and returnable provided the goods are exported within a period of six months. The certificate of payment of the deposit will be recognised in all parts of the Commonwealth, provided that when it is desired to transfer the goods they can be readily identified.

Antigua.—No special regulations are in force in this island, nor is any licence chargeable where samples are merely exhibited. A pedlar's licence is charged five shillings, and if sales be effected from a room or store a fee of twenty-five shillings is payable. A deposit covering the duty on the value of samples imported by travellers is exacted by the Treasury, but is returned when the samples are exported, duty only being charged on such as have been sold. In *Barbados* the charge for the importer's licence depends upon the quantity and value of the goods; a drawback is given of the duty paid by him on any sample or specimen of goods imported into Barbados and subsequently taken away again, provided that it is shown to

the satisfaction of the proper officer that such sample or specimen has been re-shipped and is the same as that on which duty has been previously paid.

British Guiana.—A pass is obtainable by the commercial traveller for the introduction into this colony of any specimens considered to be *bonâ fide* samples by the Comptroller of Customs. This permit can be secured by either depositing with the Receiver-General the amount of duty payable, or by giving a written guarantee for the payment of the import duty on any samples not accounted for on the traveller leaving the colony. Where the duty has been deposited, the Customs authorities shall, on being satisfied that the samples are actually shipped for exportation, return such amount to the traveller. Where, on the other hand, a guarantee has been given, this shall, under similar circumstances, be cancelled.

In *British North Borneo* regulations specially affecting commercial travellers are also non-existent, nor is any duty charged on samples, provided the latter be of no commercial value. Otherwise duty would only require to be paid in the event of the goods being sold, and a guarantee of responsibility would satisfy the Customs authorities. *British Central Africa Protectorate.*—Here, again, no special regulations or taxes affect British commercial travellers. Licences are only necessary where they carry on business as traders or hawkers. They may take orders in the country from dealers *who buy* to *sell again*, without let or hindrance. Imported samples are charged the ordinary import duty of 10 per cent., which is refunded in the event of exportation. *Bechuanaland Protectorate.*—In the case of this territory any representative of a foreign firm—defined as any person other than an importer—is liable to a licence tax of £10 per annum, and in the case of the traveller representing more than one firm he must take out a separate licence for each. Sundry concessions are made with regard to railway travelling, on production of proof to the satisfaction of the Traffic Manager. Duties on goods brought into the Protectorate are collected at the coast ports of Cape Colony and Natal, under the sections relating to which particulars in this respect will be found.

British Columbia.—No licence taxes or other restrictions are imposed by the Provincial Government of British Columbia upon commercial travellers, whether British or foreign or from other provinces of the Dominion. Municipalities, however, are empowered by the legislature to levy upon commercial travellers of all nationalities a tax not exceeding 50 dollars for every six months. In the city of Victoria all persons are free to solicit orders for trade without being taxed in any way, but in certain other cities of the province a licence fee is imposed.

In *Prince Edward Island* commercial travellers in any goods except spirits and intoxicating liquors are required to pay an annual licence fee of 20 dollars, and travellers engaged in the liquor trade are liable to a licence fee of 200 dollars. Licences granted on payment of those fees remain in force for one year from the date of issue. For selling or taking orders for goods without a licence a traveller is liable to a fine of 200 dollars, and for refusing to show his licence to a Justice of the Peace or other official to a fine of 50 dollars. Agents representing companies whose headquarters are elsewhere than in the province are subject to annual taxes at the following rates:—Fire Insurance Companies, 150 dollars; Life Insurance, 225 dollars; Accident and Guarantee Companies, 50 dollars; Trust, Loan, or Building Companies, 225 dollars; Banks, 200 dollars; Telegraph Companies, 375 dollars; Electric and Gas Companies, 100 dollars; Express.

Companies, 150 dollars; all other Companies and Associations, 100 dollars. In the provinces of *Quebec*, the Legislature has passed an Act under which any person not resident in Quebec who acts as a commercial traveller by taking or soliciting orders for any goods other than intoxicating liquors, or who advertises or offers such goods for sale by sample, catalogue, or price-list, for any principal not having a place of business in Canada, must take out a licence, which is terminable half-yearly, in the months of May and November. The agent of a commercial corporation is obliged to file a declaration giving certain details, and dealers in intoxicants require provincial licences to trade. The following is the scale of charges for the half-yearly licences referred to:—In the case of travellers dealing with the wholesale trade only, 50 dollars; where business is done with the retail trade, 100 dollars, and in the case of those dealing direct with the consumer, 200 dollars. There is, however, a provision that where a commercial traveller takes orders for machinery, plant, tools, and supplies for factories, when such articles cannot be obtained in the provinces of Quebec, the licence shall only be 50 dollars. Railway facilities are offered to commercial travellers to the extent that those belonging to the Commercial Travellers' Association are allowed to travel at the rate of 2 cents per mile on the Inter-Colonial Railway, while on the Grand Trunk, Canadian Pacific, and other railways, the rate is 2½ cents per mile, 300 lbs. of baggage being in every instance allowed free.

Cape Colony.—Commercial travellers are allowed free conveyance by rail for 200 lbs. of samples (including personal baggage), provided that such samples are not for sale. Moderate samples are generally permitted to be taken by the importer or his agent of any warehoused goods, without entry and without payment of duty, except as the same shall eventually become payable as on a deficiency of the original quantity. Under the regulations of the South African Customs Union it is customary to charge duty at the first port of entry on all samples of commercial value brought into the country by commercial travellers. Occasionally, in lieu of duty, a deposit may be accepted, to be refunded on exportation of the samples, but the latter must be exported at the port of original entry where the deposit was taken. Should the traveller wish to visit any colony in the Union other than that in which he has landed, he must provide himself with a schedule and comply with certain other formalities. He may then proceed to any other colony in the Union without further payment, endorsing on the schedule the particulars of the sale of his samples or any portion that he may dispose of, so that the colony in which the sale took place may receive its proportion of the duty. *Dominica* regards commercial travellers disposing of goods, as pedlars, and it is essential that they provide themselves with a trade licence, the charge being from 15s. to £5, in proportion to the value of the goods, but it seldom exceeds 20s. There are no special regulations relating to travellers representing more than one firm. Samples of saleable value are liable to a deposit being made, equivalent to the ordinary import duty on goods of the description dealt with. On re-exportation the deposit is refunded, less the duty on any goods which may have been disposed of in the interim. They must be shipped from the port at which they were originally landed, within three months. In the *Federated Malay States*, liquors and opium are the only commodities on which an import duty is levied, though small quan-

tities of the former carried as travellers' samples are usually admitted free. The railways allow travellers holding first-class tickets 400 lbs. of personal luggage free, with half the usual rates on any additional quantity.

Jamaica.—By a recent enactment a commercial traveller—defined as "any person not otherwise licensed under the Trade License Law (Law No. 18 of 1867), who carries on a business of soliciting orders for goods, or of effecting sales from samples"—is required to take out a licence, costing £22, 10s. if he deals in spirits, or £12, 10s. if he deals in any other kind of goods. These licences are valid for one year, and should be renewed on each succeeding 5th April, or within fourteen days thereafter. Duty is payable on samples brought into the colony by commercial travellers, with the exception of those known as "cut samples," such having no saleable value. It is customary to invoice samples at a reduction of 25 per cent. in value, on the ground that such articles, when they pass into local consumption, have to some extent deteriorated owing to their having been made use of for the purpose of obtaining orders. As a rule, samples are admitted on deposit of the equivalent of the duty, *plus* 10 per cent., this being returnable on the re-exportation of the goods, which may be made from any port of the island. Six months is the time generally allowed for the exportation of samples. In *Malta* samples of wine and spirits, exceeding four bottles of ordinary size, are subject to duty under the Customs tariff, and samples of manufactured grain (biscuits, &c.), whose weight is in excess of 7 lbs., are also subject to duty. In the Island of *Montserrat* there are no special regulations affecting British commercial travellers, whether they represent more than one firm or not, nor are principals of firms visiting the colony for business purposes liable to any restrictions. Nor are there any special Customs regulations with reference to travellers' samples. The general practice is for an officer of the Customs to check the samples on their being landed and re-exported, those sold in the interim being liable to duty at the ordinary rates. A traveller is under no obligation to leave the island within any specified period, and should the samples not be of saleable value they are not liable to any duty whatever. In *Natal* the representation of more than one firm does not involve the necessity of taking out any further licence. The principals of firms themselves, if travelling to secure business, would be regarded as commercial travellers, and would be liable to the tax in that capacity, but not, apparently, if engaged merely on a visiting tour amongst their customers. The Government Railways of Natal allow to commercial travellers, on production of their credentials, the privilege of conveying with them double the weight of free luggage which is permitted to ordinary passengers, excess weight being charged at one half the ordinary parcels rates. Such luggage may consist either of personal baggage or samples, but in the case of the latter they must be intended solely for exhibition and not for selling purposes. The luggage may be booked through to its destination, but must accompany the passenger, and not precede or follow after him.

In *New Zealand* commercial travellers, whether representing one firm or several, are subject on landing to the payment of a deposit, which is generally fixed at about £5, to guarantee the payment of the ordinary income tax on whatever business may be done in the colony. This deposit is held until the traveller has completed his transactions, when he must furnish a statement showing the amount of business he has carried

through, and in accordance with this the traveller either receives a reimbursement of any proportion of the deposit to which he may be entitled, or is subject to a claim for any tax which may be found to be due over and above the amount of the deposit which has been made. The payment of the deposit by the traveller on his arrival entitles him to a warrant authorising him to exercise his calling, penalties being exactable in any case where business is done without the possession of such official permission. On the railways in this colony commercial travellers are allowed 112 lbs. of personal luggage or samples free of charge, any quantity exceeding that amount being charged for at the rate of 6d. for every 56 lbs. or fraction of 56 lbs. for every 50 miles or fraction of that distance. Duty is chargeable on all samples which are of sufficient value for calculation, such articles as odd gloves, boots, &c., being reckoned at half the value of the articles as complete. Under the regulations which are in force in the *Orange River Colony*, commercial travellers must be provided with a licence, which costs £5 for three months. This entitles them to do business for one or more firms. Where the traveller is regularly and exclusively employed by a firm, he may, on submitting credentials to the satisfaction of the Traffic Manager, be furnished with a permit which will confer upon him the privilege of travelling first-class on the railways with a second-class ordinary ticket, such permit being valid for a period not exceeding three months from the date of issue. Travellers are allowed the free conveyance of double the weight of ordinary luggage (including samples) accorded to ordinary passengers, excess weight being charged at half parcels' and passengers' excess luggage rates, but it is stipulated that to be entitled to these concessions the samples must be for *bonâ fide* display only and not exposed for sale, and must accompany the traveller. In *St. Christopher-Nevis* British commercial travellers are not subject to any special regulations, nor are they liable to any special taxes. Any samples sold are liable to the ordinary duty as merchandise, but arrangements can be made under which a deposit will be accepted to cover such duty, such deposit being proportionately returnable on the re-exportation of the articles, which must take place from the same port as where landed. No restriction exists as to the period of re-exportation. In the *Seychelles Islands* the cost of the licence varies as follows:—For a wholesale dealer, Rs. 125; for a retail dealer for the sale of all goods except spirits, wine, beer, tobacco, gold and silver wares, and opium, Rs. 15; for sale of gold and silver wares, Rs. 15; spirits, wine and beer, Rs. 80, *plus* Rs. 20 for sale of spirits, &c., to be consumed on the premises; tobacco, Rs. 10, and opium, Rs. 100. Travellers visiting *Southern Nigeria* are not required to take out any licence, nor do any special taxes affecting them exist. Samples are permitted to be brought into the colony free of duty on condition that an undertaking is given that they will in due course be re-exported, or that duty will be paid in the ordinary way on any that may be sold. In the *Transvaal* the Ordinance No. 50 of 1902 was repealed by the Ordinance No. 23 of 1905, the latter imposing a licence duty on agents or representatives of manufacturing or trading establishments carrying on business outside the colony. These terms include "any person who in any way advertises or holds himself out as the authorised representative or agent of such manufacturing or trading establishment outside the colony, and who solicits, receives, or takes orders for the sale or supply of goods by such manufacturing or trading establishment to persons in

the colony." The amount of the licence duty chargeable under this provision is £10 per year or £6 per half-year, a proportionate charge being made for interim periods up to 30th June or 31st December. As regards railway facilities in the Transvaal, commercial travellers, on production of credentials, are allowed double the weight of free luggage permitted to ordinary passengers, excess weight being charged at half parcels rates. Such luggage must consist of personal baggage or samples intended solely for display and not for purposes of sale. It may be booked through to an ultimate destination, but must accompany the traveller, and not precede or follow him. Commercial travellers who desire to dispose of their samples may do so by first obtaining a travelling trader's (not domiciled in the Transvaal) licence, for which the charge made is £30 per annum, or £8, 5s. per quarter. In the *Virgin Islands* no special regulations exist affecting commercial travellers, nor are they required to take out any licence. Samples which do not possess a marketable value are admitted duty free, and with regard to other samples there are no special regulations. Representatives of British firms who remain in the colony for a period exceeding three months become on the expiry of that term liable, in common with all other residents, to a road tax of 4s. per annum.

Foreign Countries.—In the *Argentine Republic* a licence is required by representatives there of foreign firms, with or without a business house, the cost of the licence varying from $200 to $1680 (£17, 10s. to £147) per annum, according to locality. The cost of the licence in the town of Buenos Ayres and the National Territories, as distinct from the provinces of the interior, is $50 currency (about £4, 7s. 6d.) per annum. Travellers desiring to trade in the interior provinces must take out licences at the following rates per annum, respectively: Jujuy, $200 (about £17, 10s.); Salta, $1680 (about £147); Tucuman, $400 to $800 (£35 to £70), according to class of firm; Cordoba, $600 (about £52, 10s.); Santa Fé, $400 (about £35), but a commercial traveller doing business in Santa Fé, who sells to private individuals, is charged $2000 (about £175) for a licence. A $100 licence is imposed upon pedlars whose capital does no exceed $200. These licences are not issued for less than a year, and are not transferable; in Entre Rios the charge is $600; Corrientes, $505; San Juan, $960 (almost £84), monthly licences being also issued in this province; Mendoza, $600; Santiago del Estero, $500; Rioja, $100, and in the province of Buenos Ayres, as distinct from the town itself, $400. The traveller, upon production of his licence, is entitled to take into the country one or more cases of samples duty free. *Austria-Hungary.*—British commercial travellers are here generally exempt from any licence or tax, but should furnish themselves with certificates of identity issued by British Chambers of Commerce or mayors of towns. The only difficulty which they have (and that not invariably) had to encounter has been caused by the detention of their patterns at the Custom-house. A letter from the Consulate-General, however, certifying that the goods detained are only patterns and samples, has always sufficed to clear the articles demanded, but of course the detention involves loss of time, and is consequently prejudicial to business. It should be pointed out that although the practice is as above, there still exist, unrepealed, certain old regulations with reference to commercial travellers and agents requiring permits and imposing fees. Those merchants who intend operating in Austria would be wise to make previous inquiry as to the precise state of affairs from the Austrian Ministry of Commerce, for, after certain formalities, certificates can be

obtained which will have the effect of excluding the operation of the old regulations. Generally speaking, the certificates of identity above referred to will be accepted by the Austrian Government as entitling the bearer to the foregoing favourable exclusion. As regards agents established in the Austrian Empire engaged in doing business for British or other foreign firms, they rank as merchants, and as such are chargeable with industrial tax, income tax, and other taxes to which Austro-Hungarian subjects are liable, and which they must pay in proportion to the extent of their business. In *Hungary* commercial travellers can only pursue their calling by complying with the following regulations: (1) They may solicit orders for the articles specified below (*a* to *f*) from any person whether making use of the goods in manufacture or for re-sale, or not, viz.:—(*a*) literary and artistic products; (*b*) articles of certified "home" industry; (*c*) instruments and scientific apparatus; (*d*) sewing machines; (*e*) larger agricultural machines, *i.e.* for threshing, sowing, mowing, also locomobiles, steam-ploughs, steam-pumps, and mill-plant in general; (*f*) plant for the transmission of electric power, for lighting in general, and for telephones. (2) Commercial travellers may solicit orders for any class of goods from tradesmen who in the ordinary course of their business make use of the articles offered them either in manufacture or for re-sale. (3) Commercial travellers may solicit orders from tradesmen for office and warehouse fittings and requisites (*e.g.* business books, shelves, safes, type-writing machines, carriages, &c.) for the use of the tradesman in his business. (4) Commercial travellers may solicit orders from farmers who within the limit of their business carry on some branch of manufacture (mill, distillery, starch factory, manufacture of dairy produce, &c.). Solicitations of these orders, however, are confined to such goods as can be employed or sold by the farmer within the limits of the said manufacture. (5) The commercial traveller may receive orders from any person, and for any sort of goods, irrespective of their destination or employment, on receipt of a written invitation to call in reference to certain strictly defined articles. The solicitation of orders by commercial travellers in Hungary is prohibited in any other cases than those specified above. There is a reduced tariff for the transport of commercial travellers' personal luggage and samples on the State railways as well as on certain private railways in Austria and Hungary, the privilege being granted on the production of a certificate of legitimation issued by the Board of Trade in conjunction with the certificate of identity already referred to. By an agreement which was entered into in 1897 between the British and Austrian and Hungarian Governments, it was provided that samples brought into Austria or Hungary by British commercial travellers should be exempt from duty on certain conditions being observed to ensure their being exported or placed in bond. It was thereby stipulated that the traveller should deposit the amount of duty which would be leviable, or give a guarantee for same, such deposit to be returned or such guarantee cancelled in the event of the samples being re-exported within the period of three months.

Belgium.—Foreign commercial firms established in Belgium are taxed in proportion to the amount realised by their business transactions. Their clerks in Belgium are also liable to certain payments. Foreign merchants residing abroad, who transmit their goods to agents in Belgium, are not liable to any tax, but their agents, whether Belgians or foreigners, are obliged to pay a licence tax in accordance with Nos. 362 and 363 under Table 14, appended to the Law of the 21st May 1819. The amount varies according to the importance of the commune where they reside, as well as to the agent's

salary. But if the agents are also engaged in any profession or occupation on their own account, they are liable to a further tax. There are, moreover, special licence taxes payable by foreign insurance agents. A municipal tax is the only impost to which foreign commercial travellers are liable in *Bolivia*. The amount of this is independently fixed by the various municipalities in the Republic. The receipt for the payment constitutes a licence to the holder to carry on his business within the area of the Department of which the municipality collecting the tax is the capital. The amount of the tax also depends to some extent on the class of goods in which the traveller deals, but in no case does it exceed 300 Bolivian dollars (£23, 15s.). There are in this Republic eleven departments and territories. *Brazil.*—We will note some typical regulations. In the city and State of Rio de Janeiro no licence was required at a recent date for commercial travellers. In other States and towns the charges are as follows:—Pernambuco (State), 200 milreis (£12, 10s.), State tax; Ceará (city), 270 milreis (£16, 17s. 6d.), State and municipal taxes; Bahia (State), 1000 milreis (£62, 10s.), State tax. This tax is collected once yearly, no matter how many times a traveller may arrive in Bahia from other places in Brazil, but is enforced every time he comes from a foreign country; Para (town), 1000 milreis annually; Amazonas, 300 milreis (£18, 15s.) annually; Maranhao (town), 200 milreis annually; Rio Grande do Sul (city), 500 milreis (£31, 5s.), annual municipal tax (stated, however, not to be seriously enforced); Pelotes, 500 milreis, annual municipal tax, stated to be levied rigorously; Porto Alegre, 1000 milreis; Matto Grosso-Cuyaba, 100 milreis (£6, 5s.) each. Resident agents of commercial firms are subject to taxes which vary in the different towns and according to the class of trade. In the State of San Paulo no licence is required for commercial travellers, but samples which weigh more than ½ kilo are subject to duties. Resident agents are subject to taxes as in Rio de Janeiro. It would appear that nowhere in Brazil is any certificate required from the British authorities, but travellers are recommended to carry passports with the *visa* of Brazilian consular officers. In *Bulgaria*, a law passed in 1905 enacted that commercial travellers should provide themselves with a special licence, the charge for which is not to exceed 150 francs (£6) for the entire year and 100 francs (£4) for six months, if the traveller does not represent more than one firm. Should he, on the other hand, represent more than one house, the cost of the licence is increased to 250 francs (£10) and 150 francs for the year and half-year respectively. It is understood that these taxes are only payable by the house of business, consequently one payment for the desired period is sufficient, whether the firm be represented by one or more travellers. It is essential that travellers be provided with legitimation certificates, obtainable from Chambers of Commerce in the United Kingdom and from British consular authorities. In the *Congo Free State* a personal annual tax of 150 francs (£6) is levied on "any person acting as agent, interpreter, commercial traveller, &c., unless he or his principal is already subject to a direct personal tax in the State." The payment of this tax entitles to a special licence, to be produced on demand. It must also be presented and *viséd* at the frontier stations when the holder enters or leaves the country, and for each *visé* a charge of 5 francs is made. *Denmark.*—On the arrival of a commercial traveller with the view to doing business in Denmark, he must forthwith take out a licence for one year, no shorter period being entertained. The charge for this is 160 kroner (about £9) provided the traveller represent one house only: otherwise an additional charge of

half the amount named must be paid in respect of each additional firm he acts for. Preliminary to applying for the licence, the traveller must take care to furnish himself with a certificate to the effect that he is duly accredited by the firm he represents. This certificate must be drawn up before a notary public, whose signature should be verified by the local Danish consular representative. At each town he visits the traveller must have his licence endorsed by both the police and Customs authorities. With regard to samples, the equivalent of the duty must be deposited, but this deposit will be returned if proof be submitted of the identity of the samples and on their being re-exported within three months. In *Ecuador* commercial travellers are permitted to enter the country without any difficulty. No licence tax is imposed, and samples may be brought in simply by observing the formality of their being weighed at the Custom-house on admission and a satisfactory guarantee being given that they shall again be submitted for inspection and weighing prior to re-exportation. No restrictions are imposed with regard to the duration of the traveller's stay in the country. Samples of no commercial value, as well as all advertising matter, whether brought by the traveller himself or sent by post, are admitted duty-free. In *Egypt* commercial travellers are liable to no special tax, nor are there any regulations specially affecting their operations.

In *Japan*, while there do not at present exist any special regulations affecting commercial travellers, it would appear from the latest accounts to hand that the subject is now under investigation by the Department of Agriculture and Commerce. Under the Japanese Customs Tariff Law of March 30, 1906, an exemption from duty is granted in favour of samples of merchandise capable only of being used in that way, but the principle of insisting upon a deposit equal to the duty, returnable on re-exportation, is followed in the case of all articles which are subject to duty. *Mexico.*—The taxation of commercial travellers in Mexico is of a somewhat complicated nature, showing very considerable variations in the different States of the Republic. In numerous cases it rests, to a great extent, upon the discretion of the local official whose duty it is to assess the tax. Beyond the local rates referred to, a further tax of 25 per cent. on the respective amounts is levied on behalf of the Federal revenue. Supplementary to these ordinary taxes, a Federal stamp duty of ½ per cent. is payable on all sales effected within the limits of the Republic. Sales arranged by travelling agents representing national or foreign firms, become liable to the tax when their respective firms accept the orders and despatch the goods; but sales effected on their own account by persons who have no fixed residence, but who carry on their business by travelling from place to place, as well as those effected by the above-mentioned agents when they themselves deliver the goods, become immediately liable to the tax. In the event of the sale contract being embodied in a notarial act, a stamp duty of 70 cents for every hundred dollars' worth of goods, or fraction thereof, becomes exigible. This last-mentioned impost, it may be explained, is not in force in the Federal District, nor in the Territories of Tepic and Lower California. All taxes and other charges are payable in the Mexican currency, the Mexican dollar being equivalent to 2s. 0½d. In the case of samples consisting of goods which are dutiable under the tariff law of Mexico, the traveller will be required to furnish a bond for a sum equivalent to twice the amount of the duties leviable; but this bond will

be cancelled if the goods are taken out of the country through the same Custom-house and in the same condition as that in which they were brought into Mexico. It is essential that travellers should present their samples at the Custom-house before entering the country. With regard to the taxes payable for licences in the different States of Mexico, of which there are about thirty, it would be a matter of impossibility for us, in the space at our disposal, to enter into details. Suffice it to say, therefore, that they range from one dollar (2s. 0½d.) to $200 (£20, 8s. 4d.) monthly; while no licence tax whatever is levied in the States of Campeche, Guerrero, Jalisco, Mexico, Morales, or Flaxcala. In the *Netherlands East Indies* commercial travellers have, as a rule, to pay a tax of 2 per cent. on their income. They must within three days after their arrival report themselves to the chief of the local administration, and at the same time give information as to the place and object of their stay. They will then receive on application a certificate of admission, conveying the right to reside for six months in all parts open to general trade, a period which may be extended on application, but permits for journeys must be obtained from the Government. Samples of no commercial value are admitted duty-free, but those possessing such a value, such as gold and silver, watches, &c., must be guaranteed for duty by a deposit, which is returnable in proportion to the value of the articles remaining unsold. In the Netherlands colony of *Surinam* the only commercial travellers who need take out a licence are those dealing in spirits, who are liable to the usual tax levied on traders in that special commodity. With reference to samples, the same procedure is followed as in the Dutch East Indies. *Norway.*—A charge of 100 kroner (£5, 11s.) is exacted by the Norwegian Government from commercial travellers for a trading licence for thirty days, a like sum being levied for each subsequent period of one month for which the licence is desired. These licences are obtainable from the nearest police authority. Samples which are of no market value are admitted duty-free, and in the case of samples which do not come under this category, a drawback of the duty paid is allowed under certain conditions, if exported in the same condition as when brought into the country. In *Paraguay*, commercial travellers must pay a tax of from $400 to $600 (£10 to £15) on entering Asuncion, but they are not exempted by this payment from additional charges in the country towns, the amounts of which are not specified. Samples liable to duty will be admitted on a guarantee being given that the duty will be paid in the event of their not being re-exported within a certain time. Such samples as are of no market value, and unserviceable for use, are admitted duty-free. In *Persia* no licence duty is exacted from commercial travellers, who need only furnish themselves with a passport duly authorised by the officials representing the Persian Government in the countries from which they come. No duty is payable on samples which are too small to have a selling value, piece goods, for instance, up to thirty centimetres in length, being admitted free. Duty is charged on all samples which have an intrinsic value, while samples of firearms can only be admitted into the country by the express authority of the Shah. *Roumania.*—British commercial travellers visiting Roumania for business purposes must exhibit, besides their passport, a certificate of legitimation. Such certificates may be obtained from Chambers of Commerce in the United Kingdom, and should contain in substance similar particulars to

those provided for in the form of certificate drawn up by the Roumanian authorities. On entering Roumania, British commercial travellers are required to declare whether it is their intention to try to do business with private persons as well as with business houses; if such be the case it will be necessary for them to take out a quarterly licence, the charge varying in amount according to the description of the trade. Samples having no commercial value are admitted free of duty, whilst in the case of samples of value no duty is charged, provided they are exported or placed within a Customs warehouse, within a certain period, which can in no case exceed twelve months, and on condition that certain formalities to safeguard the revenue are complied with. *Russia.*—On arriving in Russia commercial travellers must furnish themselves with both a personal and a trading licence, the latter on behalf of the firm they represent. The charge for the former is 50 roubles (£5, 5s. 6½d.), and that for the latter 150 roubles (£15, 16s. 7½d.). In addition to these imposts there are provincial dues of 5 and 45 roubles respectively, and town dues of the same amounts, as well as which varying local dues—only legally payable in towns having no municipal organisation—must also be provided for. To obtain the trading licences referred to above the traveller must produce satisfactory credentials from his firm, as well as a "certificate of licence to trade," issued by a British Chamber of Commerce. Commercial travellers taking orders in their own name need only take out a trading licence. Only half the various taxes are payable if the licences be taken out subsequent to July 1. Licences are to be procured at the Custom-house through which the country is entered. No trading licence is necessary where the only business of the traveller is to *purchase* goods in the country. An unlimited time is allowed for the re-exportation of any samples brought into the country, when the duty paid in the first instance on these particular goods is refunded. The Russian railways place no restriction on commercial travellers. One poud (36 lbs.) is allowed free, all above which quantity must be paid for according to weight. *Finland* does not come under the Russian law with respect to commercial travellers, and in that country they are not subject to any tax. *Servia.*—British commercial travellers have in Servia the advantage of being able to pursue their calling without any licence, tax, or payment of duty on their samples, as long as they have provided themselves with a certificate drawn up in a prescribed form. These certificates may be obtained from Chambers of Commerce, mayors of towns, or Servian consuls, and will be accepted in English if that language be preferred to the French form. Such samples or patterns as have no marketable value are admitted to the country duty-free. With regard to samples of value, the amount of duty chargeable must be deposited with the Customs authorities, who will return it when the samples are taken out of the country.

END OF VOL. II.

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